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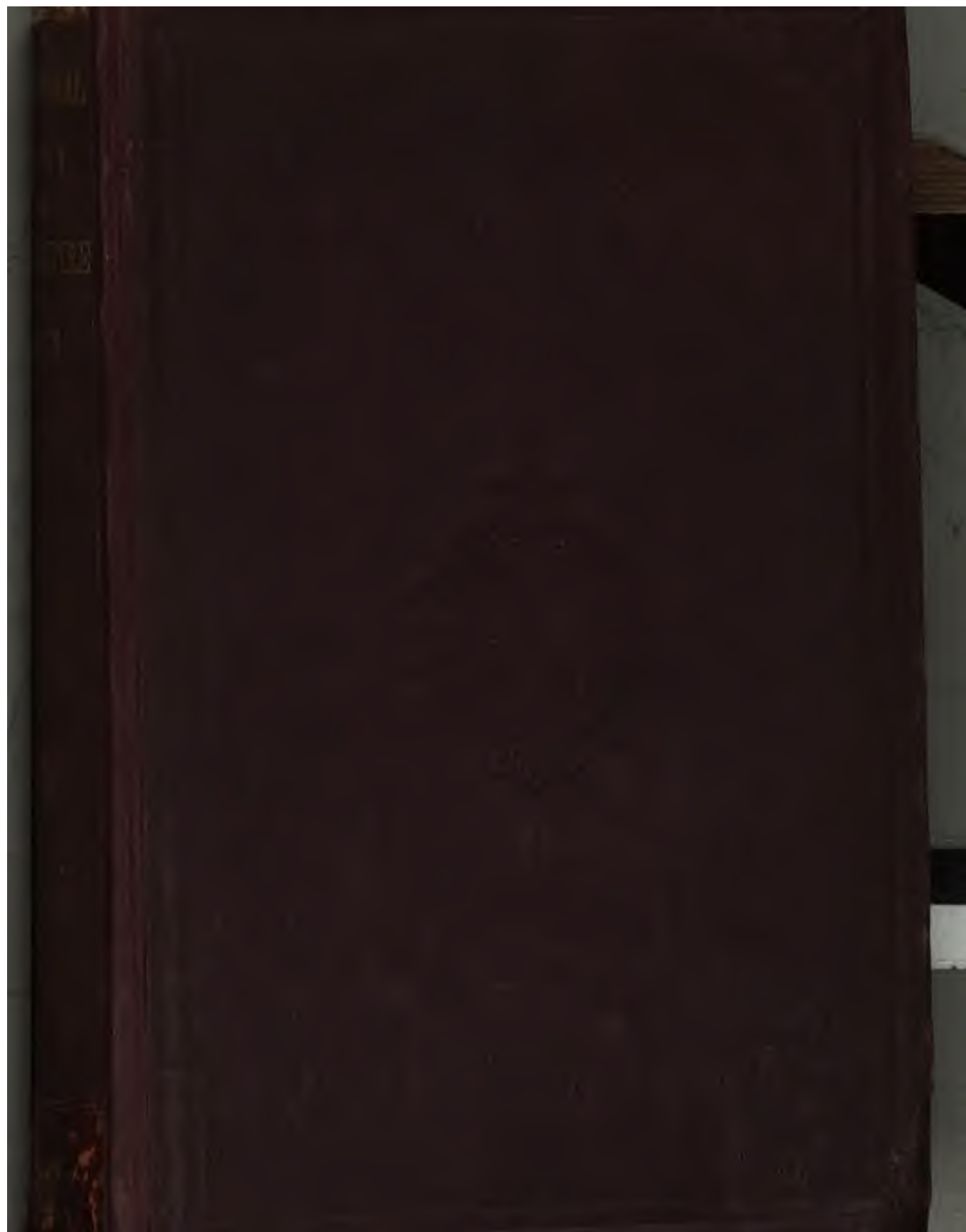
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THE BRITISH EMPIRE.

VOL. I.

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NEW-STREET SQUARE

A
CONSTITUTIONAL HISTORY
OF THE
BRITISH EMPIRE

FROM THE ACCESSION OF CHARLES I.
TO THE RESTORATION:

WITH AN INTRODUCTION, TRACING THE PROGRESS OF SOCIETY AND OF THE
CONSTITUTION FROM THE FEUDAL TIMES TO THE OPENING OF THE
HISTORY, AND INCLUDING A PARTICULAR EXAMINATION
OF MR. HUMPHREY'S STATEMENTS RELATIVE TO THE
CHARACTER OF THE ENGLISH
GOVERNMENT.

BY GEORGE BRODIE, ESQ.

HISTORIOGRAPHER-ROYAL OF SCOTLAND.

NEW EDITION.

IN THREE VOLUMES.

VOL. I.

LONDON:
LONGMANS, GREEN, AND CO.
1866.

226. i. 46.



PREFACE
TO
THE NEW EDITION.

It is now many years since I published my History of the British Empire, and often since then have I been urged to produce a new edition ; but other avocations so occupied me that I was obliged to delay it for a season, though I never renounced the idea.

During that time—induced by the remarks of some whose sentiments on various subjects differed from my own—I have subjected my work to the most searching scrutiny, and carefully reperused my authorities. I have endeavoured as far as possible to correct my errors, making alterations and additions wherever by so doing I considered I could throw more light on any subject. What is the value of History but to present truth? Dr. Robertson the great Historian used to say, that he considered himself on oath in every statement he made ; this was a just view, and such as no one who undertakes history should lose sight of.

This work was formerly entitled ‘A History of the British Empire ;’ but in the present edition I have adopted a title which explains more definitely the scope of my book.

LONDON : *October* 20, 1805.

PREFACE
TO
THE FIRST EDITION.

FROM the celebrity of Mr. HUME's Work, it may be thought to have been equally presumptuous and hopeless to enter the field which he is supposed to have so fully preoccupied. The portion of British History, however, embraced by the following volumes is so important—the picture there presented so different from the one drawn by that elegant writer, that, if it shall be found to be sufficiently supported by authority, I flatter myself that I shall be absolved from the charge of either presumption or rashness.

For the task of an historian, Mr. Hume was in many respects most eminently qualified ; but, having embarked in his undertaking with a predisposition unfavourable to a calm inquiry after truth, and being impatient of that unwearied research which, never satisfied while any source of information remains unexplored, or probability not duly weighed, with unremitting industry sifts and collates authorities, he allowed his narrative to be directed by his predilections, and overlooked the materials from which it ought to have been constructed. Many documents of essential consequence have, since his time, enriched the

public stock ; but it may appear, from the following pages, that he either did not avail himself or make the proper use of those open to his inspection. From the short period, indeed, devoted by him to that portion of British History, I conceive it to have been morally impossible for him to have become master of the necessary materials.

The Work which I now submit to the public has occupied my leisure hours for many years ; and though, to my regret, I perceive that in some respects, particularly in certain expressions which had escaped me, it might still be improved, I trust that it will be found deficient neither in research nor accuracy. Not contented with merely glancing through or dipping into the numerous publications referred to, I have, by a collation of the various parts, endeavoured to ascertain the truth. The manuscripts relative to my subject—whether in the Advocates' Library at Edinburgh, the British Museum, the Archbishop of Canterbury's Library at Lambeth, (and here I must acknowledge my obligations to Mr. Todd for his kind attention,) or the Bodleian Library—I have carefully examined. From a manuscript copy of Baillie's Letters shown to me by my valuable friend, Dr. M'CRIE, I have, to illustrate my text, extracted some passages which the Editors have omitted to publish.

As it is impossible to understand events without a thorough knowledge of all the circumstances out of which they emerged, and as Mr. Hume's view of the government, and of public opinion—on which is founded his defence of the unfortunate Charles I. and his minister Strafford—appears to me altogether erroneous, I have devoted a whole volume to introduction. From the

variety and importance of the matter which it contains, I believe that, as it was not the least difficult part of my undertaking, that volume will be regarded as not the least valuable. On religion—a subject on which the celebrated historian alluded to seems to me no less unhappy than in his ideas of the government—I have been particularly copious. Endeavouring to keep steadily in view the principles of toleration, I have yet made it my study to present such a faithful picture of the sentiments of the times as may enable the reader to form a just estimate of transactions which flowed from a more contracted policy. In recording civil events, it has ever been my object to abstain from all unnecessary indulgence in abstract speculations, and to appreciate men and things, in relation to the state of the government, of society, and of public opinion, as the only standard by which they ought to be tried.

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CHAPTER I.

A HISTORY OF THE ENGLISH CONSTITUTION, AND PROGRESS OF
SOCIETY IN ENGLAND, FROM THE FEUDAL TIMES TILL THE CLOSE
OF THE REIGN OF ELIZABETH.

ALTHOUGH the fundamental principles of the English Constitution were laid at a very early period, and have been traced back by ingenious men even to the woods of Germany, its benefits were long restricted to a small portion of the community. It requires no uncommon share of sagacity to discover that, if the land of a country be appropriated by a few, and the many have no manufactures to exchange for the produce of the soil, the lot of the latter must, under any form of government, be slavery and wretchedness. Without an equivalent to purchase the means of subsistence, they have only the melancholy alternative of starving, or of submitting to the conditions which the owners of the soil choose to impose. Such was the feudal system, under which every large estate was

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a petty principality, with one absolute lord, whose vast number of dependents, while they constituted his pride and boast, as well as the foundation of his power, were only retained on the condition of implicit obedience. Besides that they were subject to his jurisdiction, it is quite evident that no laws could have enabled them to resist oppression, since the very attempt to obtain relief would have been punished, as an inextinguishable act of mutiny, by banishment from the estate—an evil worse than death itself, since the wretched outcast would have found himself at once destitute of an asylum, and of every resource. For most estates would be overburdened with inhabitants, and proprietors would, in the general case, deny him refuge, even when it was in their power to grant it—either from a feeling of resentment and wounded pride at the boldness of a dependent that could question the authority of a chief, or through fear of offending a powerful neighbour, or of encouraging, by the example, insubordination in their own followers. Even the friends of the outcast would, to avoid his fate, be obliged to smother their feelings, to deny him assistance, and to applaud, as the award of justice, the terrible vengeance that had descended upon their kinsman. Thus, under the feudal system, though the barons vindicated their own rights from the encroachments of the royal prerogative, the bulk of the people were strangers to liberty; but as the population emancipated itself, it came within the pale of laws originally enacted for the benefit of a particular class.

The feudal system was gradually subverted by the rise of towns, where the inhabitants, enjoying security in their persons and property, and subject to regulations of their own enacting, successfully cultivated the arts, and accumulated capital. Fortunately for future ages, the barons were disposed 'to barter their power for trinkets and baubles,'* and, according to the progress of refinement, dismissed part of their retainers, that, with the produce

* Smith's *Wealth of Nations*, vol. ii. pp. 192-195.

which these had been accustomed to consume, they might gratify their growing taste for manufactures and foreign commodities. Towns, where a part of the former retainers of the aristocracy procured employment, flourishing in arts and all the literature of the age, attracted the great landed proprietors themselves, who, brought into competition in a new sphere, contended for superiority by a display of the elegancies and luxuries of life. This new emulation obliged them to diminish the number of their adherents, that they might have the means of expenditure, while it enriched the mercantile and manufacturing classes, who, likewise aiming at distinction by the only course within their reach, again stimulated the aristocracy to further expense for the purpose of preserving their distance from ranks whom their habits taught them to despise. Thus the revolution in manners daily acquired accelerated motion.

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The aristocracy were naturally both hated and dreaded by the monarch, as frustrating his ambition and controlling the regal authority ; but baronial power being likewise injurious and dangerous to the peace and safety of the other independent ranks, it was their interest to assist the Crown in reducing their common enemies under subjection to laws devised for the general good. Hence sprang the attachment of the people to the Throne, and as it proceeded from a motive that must invariably actuate mankind—the desire of security for their persons and property—it is strange, indeed, that certain writers should have inferred from it that the people had imbibed the principles of passive obedience. Attached as they were to monarchy, they never compromised the principles of constitutional freedom, and the monarch himself appears to have been fully aware of the ground on which he was entitled to their support. Thus Henry III. in order to gain the affections of the Commons, when he was driven to extremities by the barons, published a proclamation, in which he assured the people of his readiness to protect

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them against the great lords ; * and Bacon, with a view to promote the popularity of Elizabeth's reign, makes it the boast of the English government, that the aristocracy were brought under subjection to the laws, and no longer, as in ancient times, in a condition to tyrannise over the rest of the community. †

It is impossible, owing to the scantiness of materials, to determine precisely at what period the Commons were first permitted to have a voice in the government ; but they appear to have been summoned to parliament even in the reign of King John, and early in that of his successor ; the writs for their election, in the 49th of Henry III., are extant, ‡ and from the reign of Edward I. they formed a distinct branch of the legislature. Writers who have espoused the cause of prerogative—as if they deemed it a sufficient reason for consigning the people to slavery, that they can plead the precedents of former times—have laboured to establish, that in an early age the Lower House was held in little estimation, and that it slavishly adopted the views of the Crown ; but we discover no traces of this, either in the journals of parliament, and other authentic sources, or in the laws which the Lower House passed, or the taxes it imposed. It was indeed

* Cotton's *Short View of the Long Reign of Henry III.* The proclamation is partly quoted (p. 27).

† Birch's Edition of Bacon's Works, vol. ii. pp. 39 and 41. The paper from which this is extracted is entitled, 'Observations on a libel published this present year, 1692.'

‡ Cotton's *Posthum.* p. 15. Prynne, who thinks that the writs to the Commons first began in 40th Henry III. says, 'The writs of Rot. Claus. 15 Joh. pars. 2 M. 7. Dors. Patents 8 H. 3, pars. 3 M. 4. Dors. et Claus. 38 H. 3, Dors. 13—which seem somewhat like a summons of knights to parliament—being conceived by some, upon good grounds, not to be a direct summons of any commoners

or knights of shires to parliament, as members, but in another kind ; whereas we find writs of summons to parliament directed to bishops, the temporal lords and barons, before 49 Hen. III. without any such writs for knights and burgesses' (Preface to Cotton's *Abridgment of the Records*). That the knights of shires were not directly summoned *as members* before that time is likely enough, for nothing springs up to perfection all at once ; and I conceive it most probable that the first attempts were not of a decisive nature. Still these were approaches to the measure. The reason assigned for summoning burgesses is—'Ut quod omnes tangit, ab omnibus approbetur' (Brad. on *Burghs*,

the interest of the Commons to assist the Crown in controlling the greater aristocracy, since it was only by such a union of strength that they could hope to counterpoise the pernicious power of that body, and their councils acted under the direction of this policy—policy so obvious, that the monarch used his influence to have the representatives of the people constituted into a branch of the legislature; but it is to their honour that, even in the worst times, they maintained the grand principles of constitutional freedom. Irregularities were, no doubt, sometimes committed by the prince—which are, in a great measure, to be ascribed to the state of society—but the leading principles of the government were never forgotten by the people, who frequently compelled the monarch to recognise them, and to swear never to violate them more. They were consulted in all affairs of peace and war—regarding the marriages of the princes, the domestic government, &c.—and they even occasionally pursued measures which, in modern times, would be held as an invasion of the prerogative. Thus, in the 15th of Edward III. they insisted upon the nomination of the chancellor, and other great public officers, being committed to parliament.* The supplies granted by them were, for ages, generally conditional, and they often concurred with the Lords in the appointment of treasurers, for the expenditure of the amount upon the business for which it was voted; while they not rarely inserted a clause into their money bills, that the grant should not be drawn into a precedent, and that it proceeded from the free and voluntary gift of the Lords and Commons.† By

p. 33). The burgesses are said to have been summoned for the first time the year after the knights were called.

* Cotton's *Abridgment of the Records*, p. 32.

† Cotton's *Abridgment*. The same author, in his work entitled *A Discourse of Foreign War, with an Account of the Taxations upon the*

Kingdom to the End of the Reign of Queen Elizabeth, tells us, 'That as well in this reign' (Richard the Second's) 'as some of his predecessors and successors, the parliament was so tender in granting subsidies and other taxes, that they added into their Act *quod non trahatur in consequentiam*—that it should be no ex-

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the 28th of Edward I. cc. 8 and 13, the Commons, in the counties, were empowered to elect their own sheriffs—a privilege which was, however, withdrawn by the 5th of Edward II. c. 17.

How erroneous, therefore, is the estimate taken by Mr. Hume of English liberty in former times! He inculcates the notion that the English enjoyed no more freedom than the inhabitants of France and other continental states; and that they were not themselves sensible of any superior privileges. But, had he investigated the matter more deeply, he would have discovered a marked distinction in the respective governments, as well as of its being acknowledged in the strongest terms by foreigners, and fully appreciated by the people themselves. Sir John Hayward, a writer of Elizabeth's reign, in treating of the illegal and oppressive government of Richard II. says, 'All men were well acquainted with what tributes and taxations the Frenchmen were charged, having in every

ample for the future, appointing peculiar treasurers of their own to give account upon oath to the next parliament. And such grants, while they professed to proceed ex liberâ et spontaneâ voluntate dominorum et comitatuum from the free and voluntary grant of the Lords and respective counties, to be void if conditions on the king's part were not performed' (p. 19). See generally, in proof of the text, both this treatise and *Cotton's Posthum.*

The limited extent of the prerogative in regard to the barons in early times—for instance, the time of Henry III.—appears from all authentic history (see *Mat. Paris*, *Daniel*, &c.) In a remonstrance to the king, an. 1242, the barons use these words: 'Tali, scilicet, conditione quod illa exactio, vel alie precedentes amplius non traherentur in consequentiam' (*Mat. Par.* p. 516). The *Short View of the Long Reign of Henry III.*, by Sir Robert Cotton, is not altogether correct, as the author ascribes some

acts to the Commons which were done by the barons—but in other respects it is very faithful. I had formerly deemed it right to assign reasons for its readiness in opposition to the assumption of Sir W. Scott, but these are now unnecessary, and it is erroneously said (Scott's *Somers' Tracts*, where a copy will be found to have been first published in 1642). It was published in at least the year 1628, and obtained a good sale. In the year 1629, Charles threatened to take Cotton's books from him, because he was accused of imparting ancient precedents to the *Lower House*.—*Brit. Mus. Ass.* 4161, vol. ii. of a *Collection of Letters*, (Letter dated 28th of August 1629.) This threat was afterwards put in execution, and the circumstance was alleged to have broken that great antiquary's heart.—*Same Coll.* No. 53. (Letter dated 12th May 1631.) There is an old manuscript copy of Cotton's *History* in the British Museum (*Harl.* p. 2245).

country lieutenants and treasurers assigned—the one to draw the blood, the other the substance, of the slavish subjects.* Sir John Fortescue, who presided for many years as chief justice, and was afterwards nominated chancellor to Henry VI., in his celebrated book *De Laudibus legum Angliæ*, and in his other work, which is composed in English, commonly entitled *The Difference between Absolute and Limited Monarchy*, though by himself styled *The Difference between Dominium Regale, et Dominium Politicum et Regale*,† describes the constitution and privileges of England in terms which must elicit the approbation of the most liberal in our own times, while he depicts in colours that inspire us with horror the despotism and misery of France, of which, having retired thither with the wife and son of the unfortunate Henry, he was an eye-witness. According to his description, the English lived under the protection of laws enacted by themselves; in France, the principle of the civil code prevailed,—that the will of the monarch is law: the English paid taxes of their own imposing; the French, with the exception of the nobility, to whom the king granted an immunity from taxation, lest he should drive them into rebellion, were plundered at the discretion of their prince: the English, upon any charge of crime, had the benefit of a trial by a jury of their peers; in France, confession was extorted by the rack, ‘a custom,’ remarks the author, ‘which is not to be accounted law, but rather the high road to the devil.’ In England, there was an independent middle class of society; in France, all was noblesse or wretched peasantry. In England, the people lived in security and in comfortable circumstances; in France, they were in the most deplorable misery—for every ramification of government was corrupt; those who began to accumulate a little capital were by the monarch directly

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* *Life and Reign of Henry IV.* p. 250.

† This is the title which the trea-

tise bears in the MS. in the British Museum and in the Archbishop's Library at Lambeth.

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plundered of the first reward of their industry ; this despotic system required the support of an army, and these, *all foreigners*, were sent to live at free quarters on the inhabitants, whom they pillaged and abused without mercy, only shifting their quarters when they had completely exhausted the substance of their hosts. Somewhat of Fortescue's description might be ascribed to the partiality of an Englishman, were not his testimony fully confirmed by the evidence of a cotemporary French author, Philip de Commynes, who, in equally glowing colours, paints the despotism of France, and the wretchedness of the people, heightening the picture in regard to the soldiery, for their brutal licentiousness towards the wives and daughters of their hosts, while he declares England to be the best governed country he had ever known.*

Thus it appears, from incontestable evidence, that England at an early period was distinguished for her freedom, and the comparative happiness of her people ; but everything is comparative, and, in speaking of the people, we ought never to overlook the number who are included under the appellation. As in ancient times, the slaves, far more numerous than their masters, were ranked amongst things, so, infinitely the greater part of the former inhabitants of England neither enjoyed the privileges nor were included under the name of the people. The population of the towns bore a limited proportion to that of the country ; and though England was happy beyond her neighbours in a class of smaller proprietors, copyholders, and leaseholders, the bulk of the inhabitants directly depended on the aristocracy. Yet these dependents were far happier than the French peasantry ; for they were the soldiery of the kingdom, and, besides that, they were

* These authors, Fortescue and Commynes, represent matters in so very striking a point of view that I have transcribed some passages and thrown them into the form of a note at the end of the volume. They will

be found very opposite to the description of English liberty given by Mr. Hume ; and as I am afraid I have scarcely done justice to them in the text, I earnestly recommend them to the reader's perusal. (Note A.)

necessarily imbued with somewhat of the pride and spirit of men in arms, and it was the interest of their superior to preserve them in a certain degree of comfort: they had oppression to apprehend from one quarter only, while the French were neither entrusted with arms,—consequently, were neglected by the proprietor,—nor protected against the brutal licentiousness and rapacity of foreign military.*

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The revolution in manners which the towns had been gradually introducing, was rapidly advanced by the bloody wars between the houses of York and Lancaster. From that contest, which was merely a struggle for superiority between opposite factions of the aristocracy, the people, who were jealous of the nobility and gentry, stood aloof, probably not displeased to observe the factions mutually wasting their strength; and, as they did not engage in the quarrel, they were exempt from the calamities of the war, which fell wholly upon the aristocracy and the men in arms, but particularly the first. There were no burnings, plunderings, nor devastations; the common affairs of the kingdom proceeded as in a profound peace. But the aristocracy suffered dreadfully; many noble families became extinct, and none altogether avoided the consequences incident to such a struggle, while new men necessarily rose on their ruins or misfortunes. Though at the battle of Tooton, gained early by Edward IV., there was an immense carnage, yet the general practice of the contending parties, particularly of that monarch, till his victory over Warwick at Barnet, where there was an indiscriminate slaughter, was to call out to spare the soldiers, but to slay the nobles and gentry—and few of them escaped.†

* Harrison, who published in 1577, tells us, that there are no slaves in England; that the instant one sets his foot on English ground he is free as his master; and that every particular man is supposed to be present in parliament, either by himself or his attorney:—yet says, that the

fourth class in the community, including copyholders, &c., 'have neither voice nor authority in the commonwealth, but are to be ruled and not to rule' (pp. 103, 173).

† Commynes, a cotemporary, l. iii. cc. 4, 5, 6, 7 (see also l. v. c. 18, edit. 1634, à Rouen, p. 471). Stow,

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The safety of each party, as it prevailed, demanded rigorous measures for the depression of its adversaries' power; and the vanquished would, to remove suspicion, rather plunge into expense than cultivate the means of recruiting their strength. Henry VII. owed his elevation to the smaller faction; and the York party, who were hostile to his advancement, being by far the most numerous, were eager to dethrone him, in order to recover the influence and property of which his rise had deprived them. His followers, on the other hand, whom the exaltation of their chief had restored to their properties, or whose sufferings and devotion to the house of Lancaster it had recompensed out of forfeitures from their enemies, had one common interest with their leader: while, in consequence of the repeated insurrections, he could confirm their fidelity by fresh grants from new forfeitures. Henry was too politic a prince to act without the intervention of the legislature; but the posture of affairs enabled him to procure parliaments composed of his adherents, who were consequently ready to promote his views, as they accorded with their own. In the first flush of success, when their enemies were dejected, the Lancastrian faction were not likely to be greatly opposed in elections for parliament; and Henry exerted the influence of the Crown in favour of his own partisans.* From the attainders and deaths of the temporal peers, their number was diminished, and those attached to the York party

in detailing the battle of Northampton, 38 H. 6, says, 'The tenth day of July, at two of the clocke, afternoone, the Earles of Marche and Warwecke let cry, thorow the field that no man should lay hand upon the king, ne on the common people, but on the lords, knights, and esquires' (p. 400).

* Grafton, speaking of the second parliament summoned by Henry, says — 'He therefore summoned againe his great court of parliament, whereto he woulde that there shoulde

bee elected the most prudent and grauous persons of euery countie, citie, port, and borough; and in especiall such as he in al his daungers, calamities, miseries and tumultuous affaires used, trusted, and fauoured, as partakers, councelers, and companions, both of his wo and aduersitie and also of his triumph and glorious victory, whose mindes and studies he perfitly knewe to bee fixed and set in the politique regiment and prudent gouernance of the publique welth of his realme and dominion' (p. 857).

would be intimidated from opposition, while the successful faction knew it to be their interest to improve their advantage. The spiritual peers at that time formed a large proportion of the Upper House, and were inclined to support the government, in order to obtain the favour of the monarch, who even employed them chiefly in secular affairs, and connived at clerical usurpation.* The ineffectual attempts of the Yorkists to dethrone Henry, taught his adherents the necessity of strengthening the royal power, for the common benefit of the party, and of seizing the critical moment for weakening the aristocracy, from whom they principally apprehended danger.

The king and the parliament having thus the same interest, calculated their measures for depressing the aristocracy as the grand objects of fear. The old laws against armed retainers were strengthened by additional enactments; and as it was by the number of their retainers that the Yorkists could hope to regain the ascendancy, the provisions of the legislature were rigorously enforced. But the ordinary courts were unable to carry the laws into effect against powerful families, who either influenced or overawed juries—amongst whom, at this time, from the preponderance of the Yorkists in number, they must have had unusual favour—and not unfrequently intimidated the judges themselves. The very being of the triumphant party, however, required the execution of the statutes against armed retainers; and therefore a new court—that of the Star-Chamber—was created,† for the trial of offences against those statutes—according to an arbitrary course, alien to the equitable jurisprudence of England. During this reign, its powers were limited; but they were greatly extended in the next; yet, as that court reached potent families, who, from their influence over juries, were

* See Bacon's *Hist.* in regard to Henry's employment of churchmen of the guard (Halle, vol. iii.).
(p. 582 of *White Ken. Col.* vol. i.).

† In the next chapter I trust this point will be found proved.

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above the control of ordinary jurisdiction, it does not appear to have been displeasing to the people. But it exceedingly invigorated the prerogative; and from its services in that respect, its powers were, after the pretext for such an irregular institution had ceased, arbitrarily enlarged, till it threatened to absorb all other jurisdiction, and was abolished as a nuisance intolerable to every rank.

During the reign of Edward I., the aristocracy, then very powerful, had, in order to preserve the greatness of their families, procured a statute, commonly called *De Donis*, to authorize entails; and, though the people complained of its impolicy, the nobility would not consent to its repeal. The clergy, whose ambition of acquiring lands stimulated them to many ingenious arts, or finesses, for defeating the laws, had devised one, called a *common recovery*, for evading this; and courts of law had, so early as the reign of Edward III., thrown out hints of its validity. But it was only in the time of Edward IV. that what is denominated a *common recovery* was decided to be a legal conveyance which removed an entail; and it must be confessed that the season was most fit for such a judgment. Edward was no less anxious to punish his adversaries than to reward his hungry followers; and it is unnecessary to add, that his partisans participated in his feelings; but, as the law of entail often saved estates from forfeiture, his judges removed the obstacle, by deciding that a *common recovery* was a valid conveyance—a decision which, while it promoted the views of their master and his faction, gratified the people, especially the active and intelligent, who had industriously accumulated the means of purchase, and was doubtless not displeasing to many old families themselves, who laboured under a load of debt, and were debarred from sales. This decision, by defeating the statute *De Donis*, virtually repealed it; and the legislature, in the reign of Henry VII., which was as much under the dominion of feelings favourable to such policy as the partisans of Edward had been, though it did not abrogate the statute, indirectly authorised the *finesse* which ren-

dered it nugatory. The device became a common conveyance; and, that there might be no pretext for impugning it, received, indirectly, additional confirmation by parliament, both in the next reign and in that of Elizabeth.* The law in regard to fines upon alienation, was not only hostile to transferences of land, but had been productive of great insecurity to purchasers, and a statute was devised as a remedy for the evil;† but it is alleged that Henry had further a covert intention of defeating entails, by *fines*; and such a construction was put upon the statute by 32 Henry VIII. c. 36, ‘which,’ to use Blackstone’s words, ‘declares a *fine* duly levied by a tenant in tail to be a complete bar to him and his heirs, and all other persons claiming under such entail.’‡ Restrictions on the transference of land being thus removed, great tracts, which were entailed on old families, passed into other hands—carrying the influence from the old proprietors, and conferring a different kind upon the new, who were not in a condition to aspire at baronial power.

The great aristocracy thus weakened, and precluded their former field of ambition by the severity of the laws against armed retainers, daily more and more gratified their desire of distinction by indulging in expensive habits of luxury. The king’s conduct, in another respect, must have contributed to these habits, while it straitened many in the means. Under the colour of the penal laws, he wrung large sums from the subject to gratify his mean, yet predominant, passion of avarice;§ and as he was too politic a prince to provoke his adherents by extortions from them, the Yorkists would naturally endeavour to avert the evil, by removing any cause of fear in the monarch, which could be best accomplished by habits of expense, incompatible with the idea of mustering strength to overturn the government. To increase their revenue, the aristocracy were obliged not only to

* Blackst. vol. ii. p. 115 *et seq.*

† Coke’s 2nd Inst. p. 518.

‡ Vol. ii. p. 117.

§ See Bac. Hist.

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diminish, in an unprecedented manner, the number of their idle followers, but to pursue, on a far more extensive scale than formerly, a system, which had been long creeping in, of dismissing a numerous petty tenantry, who contributed much to the power but little to the profit of the proprietor, and of letting their lands in large tracts to individuals who undertook to pay considerable rents. Though this system was necessarily much encouraged by the policy of Henry and his faction, it was opposed by them,—a statute for keeping up farm-houses, in conformity with previously existing laws against depopulation, having been passed during this reign;* but nothing could more

* It appears, as well from the Statute Book (see 4 H. 4, cap. 12) as from the declaration of John Rous, the antiquary of Warwick, who died at an advanced age in 1491, that the system of pasturage and enclosing had been going on for a considerable time (J. Rossi, *Hist.* pp. 39–44, 88–96, 114–137). This author paints the evil in the strongest colours, dwells upon the inhumanity of expelling the inhabitants from their possessions, and prophesies general desolation; while he denounces eternal damnation upon the depopulators. His reasoning has some plausibility:—‘Isti villarum et ecclesiarum parochialium dirutores, deo offendunt, homines rationales a villis ejicientes et bestias pro eis irrationales inducentes. Ecclesie dei offendunt, ecclesias deo dedicatas destruentes, decimas antiquas minuentes, et solitas oblationes annihilantes. Regiam celsitudinem ledunt, eo quod ubi prius homines, ad regis et regni defensionem corpore robustos et fortitudine habiles habere solebat, modo tantum bruta animalia remanent. Pauciores etiam solito sunt modo ubi hæc pestis regnat villæ, et ex consequenti pauciores homines, et nullæ aliæ villæ per hoc crescent, sed potius, læduntur, quia

in allocatione per regiam misericordiam taxationum domini villarum dirutarum de ipsa allocatione pro carentia tenentium magnam partem ejusdem allocationis eismet appropriant, et totum onus super villas non dirutas apponunt. Offendunt etiam civitatibus et villis mercatis multipliciter, tum quia causant caritiam: Nam ubi deficient colini, deficient etiam grana, et per villarum destructionem, multi pauciores sunt coloni, et solita cultura reducit in herbagium. Sequitur ergo necessario ex hoc major parcitas granorum, et ex consequenti oritur et augetur caristia, et multimode minoratur habundantia qua civitates burgæ et villæ mercatæ prosperabantur: tum quia villis dirutis est minor populi affluentia venientis ad nundinas et mercatus, et per hoc minuitur emptio et venditio, unde mercatores ceterique mechanici depauperantur, quorum depauperatio minatur ruinam civitatum burgorum et villarum, ubi major populi confluentia adesse solebat, et si continueretur, regni totius desolationem procuraret, quod absit’ (pp. 40–1).

The aristocracy, while they pursued this system, were afraid of losing the population, and therefore got laws* to restrain the poorer country people

* St. 12 R. 2, 7 H. 4, c. 17 (see also 2 H. 5, c. 4; 4 H. 5, c. 4; 2 H. 6, c. 18; 32 H. 6, c. 12). By 8 H. 6, c. 9, the custom of London about appren-

tices is confirmed in spite of 7 H. 4; and a dispensation is granted to the city of Norwich by 12 H. 7, c. 1.

efficaciously sweep from the aristocracy the prospect of recovering their influence in the community. CHAP.
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The faction that raised Henry, insisted, for their own security, upon his marriage with Elizabeth, the eldest daughter of Edward IV., whose title to the crown by descent was allowed to be best founded. The marriage was humiliating to him, as it implied the defectiveness of his own title, and consequently made him a king by courtesy rather than by right; but as it united, in the person of his son, the opposite pretensions to the throne, it had the effect of closing the contest. Though, however, the cause of dissension was thus withdrawn, so fierce, so bloody, and so protracted a contest must have left bitter animosities behind, which, while they weakened the aristocracy in regard to the Crown, as the monarch could have opposed one faction to the other, necessarily promoted the change in manners. Both parties courted the monarch, and by an equal dispensation of his favours Henry VIII. rendered himself popular with both. He, at the same time, set an example of a different course of life, by his taste for learning, and profuse expenditure on elegancies and luxuries; and from the anxiety of each faction to gain the

from going to trades. Such is the selfishness of man. But it is not singular. It is well known upon what principle the emigration from the Highlands of Scotland was so keenly opposed (see Selkirk on that subject). Dr. Henry's observations upon the depopulating system of England are notable enough (vol. x. b. v. ch. 5, § i.). He conceives that there must have been an immense loss of lives by the wars in France, and afterwards by the civil wars: that proprietors could not easily procure hands to labour their grounds, and therefore banished the inhabitants and substituted brutes for men! The loss in the French wars must have been soon supplied; and though historians have mentioned great losses in the civil wars, if we may credit Commynes, the loss of lives, except amongst the

nobility and gentry, was not great. But a loss of this kind is never felt.

The aristocracy lost their villeins or slaves by the change of manners, as they fled to the towns, and were enfranchised. This galled that body exceedingly; and in the 1st R. 2, it was complained of that villeins would join the king's enemies to be revenged of their lords, and had subscribed large sums for mutual support. In a few years afterwards, the nobility complained that their villeins fled from them to towns, where the burgesses, under colour of their franchises, detained them; and that the rest behaved so insolently, that their masters were afraid to exercise their authority for fear of losing them (see Eden's *Hist. of the Poor*, vol. i. p. 30).

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royal favour, as well as from the commanding influence which he derived from his personal qualities in such an age, he could not fail to lead the fashion.

The young king possessed far more learning than generally falls to the share of princes, a circumstance which has been variously accounted for,—from the intention of his father during the life of Prince Arthur, the eldest son, to qualify Henry for the Archbishopric of Canterbury* (though, as Arthur died before Henry had completed his twelfth year, the studies of the latter could not have proceeded far with that view, and Arthur is said to have been equally learned†), and from the jealousy that the father entertained of his sons' superior title to the throne, which made him anxious to employ their minds in study, that they might be diverted from thoughts of government; but it ought most probably to be greatly attributed to the good sense of Henry VII., who, though pronounced illiterate by Burnet, appears to have made no despicable progress in literature.‡ The era at which the young king mounted the throne was a most important one; for the human mind, awakened from a slumber of centuries, entered upon the study of polite literature with the ardour of youth, and the art of printing, then brought to some perfection, had the effect of communicating a simultaneous impulse throughout Europe. His knowledge inspired veneration, and his patronage of learned men obtained from him the zealous voice of a body that began to be everywhere respected, and to possess considerable influence over public opinion. Though accomplished, Henry was no pedant. His man-

* Herbert, in *White Ken. Col.* p. 1.

† Burnet's *Hist. of Reformation*, vol. i. p. 18.

‡ At this time the aristocracy were utterly illiterate. See Henry's *Hist.* vol. xii. b. vi. c. 4, § 1. But the most convincing proof is, that so late as Edward VI.'s reign, a statute was passed to extend the benefit of clergy, on conviction of crimes, to

peers, though they could neither write nor read. Now Henry VII. kept a journal with his own hand, was intimately acquainted with French, and understood Latin—a great deal for the age in which he lived—the standard by which his pretensions ought unquestionably to be tried (see *Bac.* p. 637).

were frank, and perfectly in unison with the genius of his age. He was skilful in music, and excelled in all manly exercises to which the higher classes were then addicted. The effect of these qualities was heightened by the advantage of a good exterior: his ruddy complexion and portly figure were particularly calculated to make an impression on the fair sex as well as the multitude.* The very first measures of his government heightened all his advantages. He withdrew the royal protection from Empson and Dudley, two of his father's legal engines of oppression, who suffered the punishment due to all who are instrumental in promoting tyranny under the colour of law. He restored part of his father's ill-acquired property, and profusely squandered the funds which had so industriously hoarded.† Such a character was

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Herbert, p. 1 *et seq.*; Halle, 1st Henry VIII.; Hol. p. 799

116, 1st year of Henry's reign. 790 *et seq.*; Herbert, p. 1 *et*

son's defence before the council was so remarkable, and so successful, that it is remarkable good. It is to me to be superior to the usual peroration of Strafford. I fell a sacrifice to the aristocracy with the king's consent. I reported to have been the son of a sieve-maker; besides, his case passes unheeded. I can bear transcribing it: 'I have said,' says he, 'two causes in that move attention: one is the earnestness, the other is the freshness and novelty of argument. These concur so manifestly in their now questioned, that I will much implore your patience. On the other side, considering violent persecution, I cannot look it a favour that I may remove myself; but, alas! to whom? My master, to whom I appeal, as to my supreme protector, abandons me to enemies, without other cause than

that I obeyed his father's commands, and upheld the regal authority. The people, on whose equal trial I should put my life, seek my destruction, only because I endeavoured to execute those laws *whereof themselves were authors*. What would have happened to me if I had disobeyed my king, or broke my country's laws? Surely, if I have anyways transgressed, it is in procuring that these penal statutes might be observed *which yourselves in open parliament decreed*, and to which you then submitted both your persons, estates, and posterity: and if this be a crime, why do you not first repeal your proper acts? Or if, which is truth, they stand still in full force and virtue, why do you not vindicate from all imputation both yourselves and me? For, who ever yet saw any man condemned for doing justice, especially when, by the chief dispenser thereof, which is the king, the whole frame of the proceeding hath been confirmed and warranted? Nay, who ever saw man on these terms not rewarded? And must that which is the life and strength of all other actions, be the subversion and overthrow of mine? Have you read or heard in any well-

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quite calculated to lead the fashion in a new course of life for which so many other circumstances had prepared the highest ranks; and as the lower independent ranks were inclined, for their own security and respectability, to support the monarch in repressing the insolence and dangerous power of their superiors, it is not wonderful that the change of manners advanced with unprecedented rapidity.

This grand revolution in manners, how beneficial soever to towns, to the smaller proprietors, and to such as could undertake extensive agricultural concerns on lease, came fraught with the most deplorable consequences to the numerous dependents of the aristocracy. Had the importation of manufactures been prohibited, had there been perfect liberty allowed in the choice of trades and professions, and had a free trade in grain been permitted, the evil would have been greatly mitigated, as much of the superfluous population dismissed from estates might have found employment in a more independent way than formerly, stock might have been quickly accumulated, and the whole country enriched. But, unfortu-

governed country, that the infractors of laws made by public vote and consent, escaped without punishment, and they only punished who laboured to sustain them? Or when you had not read or heard any such thing, could you imagine a more certain sign of ruin in that commonwealth? And will you alone hope to decline this heavy judgment? When, contrary to all equity and example, you not only make precedents for injustice and impunity, but, together with defaming, would inflict a cruel death on those who would maintain them, as if this might be a fit guerdon for those who, I must tell you, everywhere else would have been thought the best patriots, what can we expect then but a fatal period to us all? But let God turn this away, though I be the sacrifice. Only, if I must die, let me desire that my in-

dictment may be entered on no record, nor divulged to foreign nations, lest, if they hear, in my condemnation, all that may argue a final dissolution in government, they invade and overcome you' (Herbert, p. 3). Empson perhaps deserved his fate; but of all state offenders in modern times who have canted about their virtue, he spoke to the greatest purpose. In passing, we may remark a curious fact in regard to the advocates for the antiquity of the Star-Chamber. This individual, who had been a member of council during the preceding reign, was first attacked there, and committed by it to the Tower, that he might meet the justice of his country; and they have argued that this proves, that as the Star-Chamber and council were the same, it acted as a court of law.

nately, the selfishness of the different branches of the legislature led to the adoption of a very opposite policy. The interests of the people were so far neglected, that the population, dismissed from estates, were precluded the towns, and prevented by severe laws from earning subsistence by the coarsest manufactures—policy that bereft them of every medium through which they could acquire the means of life: and strange it is, that this did not proceed entirely from the influence of the towns, which were naturally actuated by the principle of monopoly, but from the mean selfishness of the owners of land, who, while they mercilessly dismissed their dependents, were yet afraid that the influx of inhabitants into towns might raise the wages of country labour.* The same spirit of selfishness, or at least folly, in the aristocracy, made them keep the ports open for foreign wrought goods, that they might purchase manufactures from the cheapest market; and as Antwerp and other continental towns had accumulated more capital, and made greater improvements in machinery, they could furnish the goods of so superior a fabric, and on so comparatively moderate terms, as to preoccupy the English market and retard the prosperity of that country.† Absurd notions about forestalling, and the confined views of the monarch in regard to population, prevented all trading in grain—a circumstance necessarily productive of

* It is almost unnecessary to quote authorities on a point so well known; I shall, therefore, refer generally to Anderson's *Hist. of Com.*, to Eden *On the Poor*, and to Dawson's *Inquiry*, p. 134; also to the statutes quoted in a preceding note; and to 5 and 6 Ed. 6, c. 8; 4 and 5 Ph. and M. c. 5; 5 Eliz. c. 4.

† The woollen manufactures of England had been greatly fostered and protected by law (the importation of foreign cloths was even prohibited by the 2nd of Edward 3, c. 3), and flourished so much that there was a considerable export annually; but

almost every other species of manufacture was imported (Anderson's *Hist. of Commerce*, vol. ii. 4to ed.). A law passed in the time of Henry VII., to protect the home manufacture of small silks, prohibited the importation of these articles, which, says Bacon, 'touched at a true principle' (*Hist.* p. 631). In the same reign, we trace in one Act the principle which afterwards formed the basis of the Navigation Laws. Wines and woods from Gascony and Languedoc were ordered to be imported in English bottoms only (Bacon, p. 597).

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baneful consequences—for the consumption of produce on estates being by the dismissal of dependents so greatly diminished, and the exportation of, and even dealing in, corn being prohibited by absurd and iniquitous laws,—whence one province might be exposed to all the misery of famine, though another at a small distance was overstocked with grain,—while wool, for which there was a great demand from abroad, was a free article of commerce, proprietors of land found pasturage more profitable than tillage, and quickly laid down their lands. This greatly augmented the misery of the lower ranks; for, as pasturage does not require a third of the hands necessary for tillage, the superfluous population was dismissed, and enlarged the number of the destitute.* Without country labour—

* We have seen what John Rous says upon depopulation, and shall now quote the observations of the famous Sir Thomas More:—‘Oves, inquam, vestrae quæ tam mites esse, tamque exiguo solent ali, nunc tam edaces atque indomitæ esse cœperunt, ut homines devorent ipsos, agros, domos, oppida vastent ac depopulentur. Nempe quibuscunque regni partibus nascitur lana tenuior, atque ideo pretiosior, ibi nobiles et generosi, atque adeo abbates aliquot sancti viri, non his contenti redditibus fructibusque annuis, qui majoribus suis solebant ex prædiis crescere, nec habentes satis, quod otiose ac laute viventes, nihil in publicum prosint, nisi etiam obsint, arvo nihil relinquunt, omnia claudunt pascuis, demoliuntur domos, diruunt oppida, templo duntaxat stabulandis ovibus relicto, et tanquam parum soli perderent apud vos, ferarum saltus ac vivaria, illi boni viri habitationes omnes, et quicquid usquam est culti, vertunt in solitudinem. Ergo, ut unus helluo inexplibilis ac dira pestis patriæ, continuatis agris, aliquot millia jugerum uno circumdet septo, ejiciuntur coloni quidam suis, etiam aut circumscripti fraude, aut vi oppressi exuuntur, aut fatigati injuriis, ædiguntur ad venditionem.’—So Sir

Giles Overreach was, then, no ideal monster. It was not the right of ownership alone that was exercised; small proprietors were either circumvented, oppressed with actual force, or wearied out of their possessions by injuries.’ Itaque quoquo pacto emigrant miseri, viri, mulieres, mariti, uxores, orbi, viduæ, parentes cum parvis liberis, et numerosa magis quam divite familia, ut multis opus habet manibus res rustica: emigrant, inquam, e notis atque assuetis laribus, nec inveniunt quo se recipiant, supellectilem omnem haud magno vendibilem, etiam si manere possit emptorem, quum extrudi necesse est, minimo venundant: id quum brevi errando insumpserint, quid restat aliud denique, quam uti furentur et pendeant juste scilicet, aut vagentur atque mendicent, quamquam tum quoque velut errone conjiuntur in carcerem, quod otiosi obambulent, quorum opera nemo e st qui conducatur, quum illi cupidissime offerant. Nam rusticæ rei, cui assueverunt, nihil est quod agatur, ubi nihil seritur. Siquidem unus opilio atque bubulcus sufficit ei terre depascendæ pecoribus, in cuius cultum, ut sementi faciendæ sufficeret, multæ poscebantur manus. Atque hac ratione fit, ut multis in locis annona multo

precluded the towns, and prevented from deriving a subsistence by any species of manufactures—a great part of the people were reduced to the last resort of begging, theft, and robbery, and daily perished of hunger, or suffered for the irregularities into which they were driven.

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The evil might not be altogether instantaneous: vanity, shame, fear, compassion, might restrain many landlords from at once dismissing dependents when they ceased to be necessary for pomp or power, and clogged their own views of a silly ambition; the difficulty of procuring tenants with capital must have operated to a certain extent on others; but the Revolution, when it had reached a certain point, daily advanced with increasing celerity. Residence in town naturally weakened the sympathy between landowner and tenant; each succeeding generation, educated in a new school, were imbued with different feelings;* and, besides that the opportunity afforded by leases of large tracts, to accumulate capital, increased the number of tenants who were in a condition to embark in extensive undertakings,†

sit carior. Quin lanarum quoque adeo increvit pretium, ut a tenuioribus, qui pannos inde solent apud vos conficere, prorsus emi non possint, atque ea ratione plures ab opere ablegantur in otium' (Mor. *Utop.* l. i.)

Lord Bacon, in his *History of Henry VII.*, says that 'enclosures at that time' (1480, when the law of Henry VII. about farm-houses was passed) 'began to be more frequent, whereby arable land, which could not be manured without people and families, was turned into pasture, which was easily rid by a few herdsmen; and tenancies for years, lives, and at will, whereupon much of the yeomanry lived, were turned into demesnes' (p. 500).

* We learn from J. Rous that, even in his time, the son always improved upon the father in this respect. 'Avari patres cupidiores generant filios: ubi forte, pater pro cupiditate

unam destruxit villam, ejus moribus avarus filius destruit plures villas' (*Hist. Rer. Ang.* p. 80). It appears from a proclamation in 1521, quoted by Stow—a proclamation founded upon statute—that the evil had been proceeding rapidly for fifty years previously (Stow, p. 512).

† Leases to tenants were common at a very early period. In the award between Henry III. and the Commons, in the 51st of his reign, after some arrangement about the ransoms of proprietors who had been robbers—a proof of the barbarity of the times—it is provided, sec. 24, that 'Fermors that were against the king, shall leise their *termes*, saving the right of their lords to whom they pay their yearly rent; and they that shall have the farms after the terms expired, shall render them to the true lord.' St. Marl. c. 16—23, provides, that 'all fermors, *during their termes*, shall not

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proprietors themselves, induced by the facility of managing immense flocks by herdsmen, and by means of enclosures, fell into the practice of retaining the natural possession of the soil.* Entails, too, being now rendered nugatory, great transferences of property took place; and the purchasers, feeling none of the sympathies that might be supposed to exist between their predecessors and their dependents on the soil, would not conceive themselves under any obligation to retain or support them.

Of the unrelenting barbarity with which this new system was pursued, we have unhappily the amplest testimony. 'Now, the robberies, extortions, and open oppressions,' said an indignant preacher before Edward VI., 'of covetous cormorants, have no end nor limits, no banks to keep in their vileness. As for turning poor men out of their holds, they take it for no offence; but say the land is their own, and so they turn them out of their shrowds like mice. Thousands in England, through such, beg now from door to door, who have kept honest houses.†'

make any waste, sale, nor exile of house, woods, men, nor of any thing belonging to the tenements that they have to farm, without special licence had by writing or covenant, making mention that they may do it; which thing if they do, and thereof be convict, they shall yield full damage, and shall be punished by amercement grievously.'

* This is established by the passages already quoted from More and Bacon: but from st. 25 Henry 8, c. 13, to limit a flock to 2,000, the practice appears to have reached an astonishing height. It is said in the preamble that some had 24,000.

† Bernard Gilpin, Strype's *Ecclesiastical Memorials*, vol. ii. p. 441. The language of these great and mighty men, says Gilpin, is, that 'the commonalty lived too well at ease. They grew every day to be gentlemen, and knew not themselves. Their horns must be cut shorter, by

raising their rents, and by fines, and by plucking away their pastures' (*Ib.*). The style of these preachers is so extraordinary, especially when we consider the chief auditor, that another sentence may not be unacceptable:—'Oh Lord, what a number of such oppressors, worse than Ahab, are in England, which sell the poor for a pair of shoes (Amos ii.), of whom, if God should serve but three or four of them as he did Ahab, to make the dogs lap the blood of them, their wives and posterity, I think it would cause a great number to beware of extortion. And yet, escaping temporal punishments, they are sure, by God's word, their blood is reserved for hell hounds. England hath had alate some terrible examples of God's wrath, in sudden and strange deaths of such as join field to field and house to house. Great pity they were not chronicled to the terror of others.'

ould be vain to attempt a description of the misery
 ose who, no longer necessary for pomp or power,
 mercilessly banished their homes, and debarred
 means of subsistence, or yet the consequences that

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famous Latimer also in-
 d so bitterly before the king
 e same subject, that the
 classes, as he himself ob-
 charged him with sedition.
 (p. 32), that where there had
 a great many householders and
 antes, there is now but a
 eard and his dog'—he charges
 istocracy with intending 'to
 be yeomandry slauery, and the
 slauery.' He gives likewise a
 picture of his father's family,
 e the change of times.

father,' says he, 'was a yeo-
 nd had no lands of his own,
 e had a farne of 3 or 4 pound
 year at the uttermost, and here-
 e tilled so much as kept halfe
 a men. He had walke for an
 d sheepe; and my mother
 l thirty kine. He was able,
 d find the king a harness, with
 fe and his horse, while he
 o the place that he should re-
 the king's wages. I can re-
 ar, that I buckled his harness,
 he went to Blackheath fiede.
 pt me to schoole, or else I had
 en able to haue preached be-
 he king's majesty now. He
 d my sisters with fiue pound,
 nobles a piece, so that he
 at them up in godlines, and
 of God. He kept hospitality
 : poore neighbours; and some
 he gaue to the poore, and al
 did bee of the said farne.
 e he that now hath it, payeth
 nd by the yeare, or more, and
 able to doe any thing for his
 , for himselfe, nor for his chil-
 or give a cup of drink to the
 ' (First Sermon before King
 rd, p. 32). The preacher pre-
 the decay of learning and the
 from this, as almost all diuines
 sons of yeomen. 'Is this
 e,' says he, 'taught by rich

men's sons? No, no. Read the
 Chronicles; ye shall find some time
 noblemen's sonnes, which haue beene
 unpreaching byshope and prelates,
 but yee shall finde none of them
 learned men. But verily, they that
 should looke to the redresse of
 these thinges bee the greatest against
 them.'

See in Strype's *Memorials*, vol. i.
 p. 392 *et seq.*; vol. ii. p. 141 *et seq.*,
 passages, quoted from different au-
 thors, which present the most direful
 picture:—whole towns became deso-
 late, no man dwelling there except a
 shepherd with his dog, people starv-
 ing, and unjustly and illegally thrust
 out of their possessions.

In a proclamation by King Edward,
 in 1548, the misery arising from en-
 closures is described in strong colours.
 In some places, where there used to
 be 100 or 200 inhabitants, there was
 then scarcely one poor shepherd—
 'So that the realm thereby was
 brought to a marvellous desolation.
 Houses decayed, parishes diminished,
 the force of the realm weakened, and
 Christian people, by the greedy
 covetousness of some men, eaten up
 and devoured of brute beasts, and
 driven from their houses by sheep
 and bullocks' (Strype's *Ecclesiasti-
 cal Memorials*, vol. ii. p. 92, &c.). The
 landowners maintained that they
 acted by their right of property; but
 it is a little odd that no such plea was
 admitted for money-lenders, whom
 they would not permit to take interest.
 The aristocracy, however, were the
 legislators, and they were likewise
 borrowers. They pursued the same
 principle in regard to labourers, whose
 wages they attempted to regulate.
 The statutes on this subject, from 23
 Ed. III. downwards, are full of
 complaints against labourers, for
 exacting so much.

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flowed from their misery. The country swarmed with beggars, thieves, and robbers: despair drove the wretched to repeated insurrections, which threatened the overthrow of all the established institutions of society.* The husbandman was plundered, the magistrate resisted, and the most cruel sanguinary laws failed to terrify into submission men who were perishing with hunger. The number of Egyptians, by augmenting that of a beggared population, increased the common calamities.†

* See Strype's *Ec. Mem.* vol. ii. p. 92 *et seq.* 150, 166 *et seq.* 353.

† Harrison's *Description of England*, in Holin. vol. i. p. 182 *et seq.*, as to beggars. In p. 186 he says, 'Our third annoiers of the commonwealth are roges, which doo verie great mischeefe in all places where they become. For they spare neither rich nor poore. But whether it be great gaine or small, all is fish that cometh to net with them, and yet I saie both they and the rest' (other kinds of malefactors which the author speaks of in the same chapter—the 11th) 'are trussed up apace. For there is not one yeare commonlie, wherein three hundred or foure hundred are not deuoured and eaten up by the gallows in one place and other. It appeareth by Cardane, who writeth upon the report of the Bishop of Lerouia, in the geniture of King Edward the Sixt, how Henrie the Eight, executing his laws verie seuerellie against such idle persons, I meane great theeues, pettie theeues, and roges, did hang up threescore and twelue thousand of them in his time.' The enlightened and benevolent Sir Thomas More condemned the cruelty exercised towards these unhappy wretches, and held that no man could justly be put to death for theft. We learn from him, that twenty were frequently hung on one gallows, and yet that the evil was not abated. (*Utop.* l. i.—See Eden *On the Poor*, vol. i. particularly p. 101, as to the cruelty of the laws against the poor.) Even in the year

1596, when the mischief was greatly lessened, the state of the country was most wretched (Strype's *Ans.* vol. iv. from 291 to 295). The nation was, however, plagued with worse rogues than these. Justices of peace were beyond measure corrupt. 'These,' said a member of the Lower House in Elizabeth's time, 'be the basket justices, of whom the tale may be verified of a justice that I know, to whom one of his poor neighbours coming, said, "Sir, I am very highly rated in the subsidy-book; I beseech you to help me." To whom he answered, "I know thee not." "Not me, Sir?" quoth the countryman, "Why, your worship had my team and my oxen such a day, and I have ever been at your worship's service." "Have you so, Sir?" quoth the justice; "I never remembered I had any such matter, no, not a sheep's tail." So unless you offer sacrifice to the idol-justices, of sheep and oxen, they know you not. If a warrant come from the lords of the council to levy a hundred men, he will levy two hundred; and what with chopping in and choosing out, he'll gain a hundred by the bargain.' The same member declares that a justice of peace, 'for half a dozen of chickens, will dispense with a whole dozen of penal statutes' (D'Ewes' *Jour.* p. 681.)

'Another way,' says Strype, speaking of Edward VI.'s time—in 1553 (in vol. ii. of *Ec. Mem.* p. 439)—'they (the gentry) had of oppressing their inferiours, was when these were forced to sue them at

The melancholy state of the kingdom early attracted the attention of the legislature, but its enactments were not calculated to meet the evil when it was the interest of the lawgivers to elude them.* The statute of 1489, for keeping up farm-houses, though pronounced by Bacon a statute of singular policy, and as evincing admirable wisdom in the king and parliament, and which therefore Bacon, in his time, endeavoured to strengthen by additional laws, was merely a repetition of former enactments, and proves a change of system in the country, but did not relieve the misery of the people.† The law provided that all houses of husbandry, used with twenty acres and upwards, should be maintained and kept up for ever, with a competent proportion of land attached to them—under

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the law for some wrong they had done them, or for some means which they violently detained from them. For either they threatened the judges or bribed them, that they commonly favoured the rich against the poor, delayed their causes, and made the charges thereby more than they could bear. Oftentimes they went home with tears, after having waited long at the court, their causes unheard. And they had a common saying then, "Money is heard everywhere." The author gives some instances of gross corruption in the judges, principally taken from Latimer's *Sermon before the King*. That worthy prelate wished 'a Tyburn-tippet for such as took bribes or perverted judgment; if it were the Judge of the King's Bench, the Lord Chief Justice of England; yea, if he be my Lord Chancellor himself—to Tyburn with him' (*Lat. Sermons*). This preacher had suitors at all times praying him to intercede in their favour for justice; and he advised the king, the protector, &c. to hear causes themselves. Even murders by men of note escaped unpunished, through the baseness of the ministers of the law (*Strype's Mem.* vol. ii. p. 442). But the most in-

controvertible proof is the following extract from Sir N. Bacon's speech, as Lord Keeper, to parliament, in 1572, at opening the session:—"Is it not, trow you, a monstrous disguising, to have a justice maintainer, to have him that should by his oath and duty set forth justice and right—against his oath, offer injury and wrong?—to have him that is specially chosen amongst a number by a prince, to appease all brawlings and controversies, to be a sower and maintainer of strife and sedition—by swaying and leading of juries according to his will—acquitting some for gain, indicting others for malice, bearing with them as his servants or friends, overthrowing others as his enemies—procuring the questmonger to be of his livery, or otherwise in his danger, that his winks, frownings, and countenances may direct all inquests? Surely, surely, these be they that be subverters of all good laws and orders, yea, that make daily the laws, which of their nature be good, to become instruments of all injuries and mischiefs' (*D'Ewes' Jour.* p. 153).

* Strype's *Ec. Mem.* vol. ii. p. 94, *et seq.* 171 and 172.

† *3rd Inst.* p. 204.

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the penalty of seizure of half the profits by the king or the lord of the fee, till the statute were complied with.* Bacon was not prevented by the evident futility of this law for ages, from deducing mighty advantages from its supposed effect of rearing up a middle rank of society.† But the consolidation of farms was not retarded by these enactments, however individuals might be harassed by them; and as the country population was so greatly diminished, while intercourse with the cities and large towns daily increased, provincial towns—which had owed their importance to the demands of such a numerous body of country inhabitants for coarse articles of manufacture, &c., and could not compete in productions of an equal fabric with those furnished by the large towns—fell into decay.‡ But as the laws about apprenticeships did not apply to them, part probably, by removing into the large towns, where their industry would be rewarded, escaped the misery of their former customers; a large portion must, however, have shared the common calamity, as their labour could no longer be required.

While the kingdom groaned under such wretchedness, the Reformation was effected; an event which, though it proved ultimately productive of the happiest consequences, in the outset greatly augmented the misery of

* Bacon's *Hist.* p. 596.

† In 1597, this great philosopher brought that important topic before the Lower House, and his speech was to this purpose: 'Inclosure of grounds brings depopulation, which brings—1st, Idleness; 2dly, Decay of tillage; 3dly, Subversion of houses, and decay of charity, and charges to the poor; 4thly, Impoverishing the state of the realm.' 'I would be sorry,' says he, 'to see within this kingdom that piece of Ovid's verse prove true, *Jam Seges ubi Troja fuit*; so in England, instead of a whole town full of people, nought but green fields, but a shepherd and his dog' (D'Ewes' *Jour.* p. 551).

‡ It appears from a passage quoted already from More's *Utopia*, that the lower classes used to manufacture some of their own articles of dress. Yet a part of the manufacture only—as the spinning—could be accomplished by them (see also Eden, p. 121, as to this). Moryson too, in his *Travels*, published in the beginning of the seventeenth century, says,—'Husbandmen wear garments of coarse cloth, made at home, and their wives wear gowns of the same cloth' (p. 178). Both Hume and Eden (see the last, at p. 100) have attempted to account for the decay of provincial towns, but, in my opinion, unsatisfactorily.

the lower orders. By the dissolution of religious houses, the devotees of the old religion, with their attendants, paupers, &c. to an immense number, were thrown loose upon the world; and though some regulations were devised to afford part of them relief, the great body were obliged to join the common herd of rogues and beggars, or perish of hunger.* Nothing, indeed, casts a greater stain upon the Reformation, than the treatment of the unhappy devotees of the old religion, who were not only divested of their livelihoods, but held up in every form to public abhorrence and scorn,† exposed to the harshest and most inhuman punishments by statutes directed particularly against them;‡ ridiculed on the stage in

* 'The monks,' says Eden 'to the number of fifty thousand, were converted into miserable pensioners, and, unaccustomed to the active exertions of industry, were thrown among the busy crowd, to whose manners and modes of life a long seclusion from the world had rendered them indifferent' (p. 94). That part of the monks got pensions, at the rate of four, six, and even eight pounds a year, is a point established by the clearest evidence (see Burnet's *History of the Reformation*, vol. i. p. 487. b. iii. and No. 3 of Col. there referred to; Strype, *Ec. Mem.* vol. i. p. 262); but this extended to a very small portion of the fifty thousand. Thus, in the case alluded to by Burnet, where the highest pensions were allowed, thirty monks had pensions assigned; but then there were thirty-eight individuals, denominated religious persons, who were dismissed with a sum of money distributed amongst them, amounting only to £80 13s. 4d., or little more than two guineas a-piece—a sum that could not support them above a few weeks or months at most. Besides these, there were 144 servants, who were merely paid up any arrears of wages. It was in fact only those who were in priests' orders that became stipendiaries. According to some accounts, no

provision, in the majority of cases, was made for any (Anderson's *History of Commerce*, 4to edit. vol. ii. p. 63). And then the hospitals, to the number of 110, being also dissolved, an immense addition of poor, formerly provided for, were thrown amongst the general mass of the indigent. It is quite ridiculous to suppose that above a small proportion of the fifty thousand got pensions; because the annual rent of the religious houses was at the utmost only about £160,000, and even at four pounds a-piece, their aliment would have much exceeded the whole. It is true that this annual rent was not a tenth of the value, because these houses had granted leases at low rates for large fines; but, in the mean time, it stood thus. The begging friars, I presume, were never thought of, while their trade was interdicted; and it would appear that the pensioners had much difficulty in getting their annual pittance (Strype's *Ec. Mem.* vol. ii. p. 98).

† See the libel against that class, entitled, 'The Petition of the Beggars to Henry VIII.,' in the first volume of Somers' *Tracts*, by Scott. They are there accused of every crime.

‡ Burnet's *Hist. of Ref.* part ii. b. i. p. 83. The Act referred to by him, passed in 1543, is a most

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stupid interludes and farces*—for begging a little bread of the charitable, to the necessity of which they had been reduced by an event which human foresight could not calculate on. This too proceeded from men who had got their lands, or from ecclesiastics of the new establishment, who were ready to exclaim against the sacrilege of touching the patrimony of the church—which, while they mercilessly divested their predecessors of it, they conceived ought still to be applied to holy uses.† But the misery attending this event did not rest here. The lands attached to religious houses were immensely extensive; and as corporations are ever the best landlords, its tenants, though numerous, and holding consequently small farms, may be presumed to have been the most independent and comfortable of their class; but, now that the ground passed into other hands, where there could exist no sympathy with its occupiers, they, exclusive of any security that part of them might derive from leases (leases were confirmed by statutes), were forced either to quit their possessions, or to submit to such an enhance-

inhuman one, adjudging vagabonds to be the slaves of any one who presented them to a justice, for two years, and to have the letter V imprinted on their breasts with a red-hot iron. The masters were permitted by the statute to treat these slaves in a manner utterly revolting to humanity; and if any one ran from his master, and was absent for fourteen days, he was to become his slave for life, after being branded on the forehead or cheek with the letter S; and if he ran away a third time, and was convicted by two witnesses, he was to be punished as a felon with the pains of death. 'A great many provisos,' says Burnet, 'follow concerning clerks so convict; which shew, that this Act was chiefly levelled at the idle monks and friars, who went about the country and would betake themselves to no employment; but finding the people

apt to have compassion on them, continued in that course of life.' The prelate who could write thus, is yet ready to exclaim about the poverty of the clergy. But these were Catholics, and a difference in religion with some men shuts up every avenue of compassion.

* See 1st vol. of Burnet, p. 576, as to the stage plays.

† Strype's *Mem.* vol. ii. p. 261. A strange fatality was alleged to attend those who were concerned in plundering the church. Whitgift told Queen Elizabeth, that 'church lands added to an ancient inheritance had proved like a moth fretting a garment, and secretly consumed both; or like the eagle that stole a coal from the altar, and thereby set her nest on fire, which consumed both her young eagles and herself that stole it' (*Life of Hooker*, prefixed to his works, p. 12, fol. ed.).

ment of the terms as must have blasted all their prospects.*

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The melancholy tone of the statutes, the declamations of the pulpit, and of cotemporary authors, against the cruel selfishness of proprietors,—the general rage against large flocks of sheep, and against enclosures, the effect of which was to consolidate many farms and abridge the number of labourers,—the repeated insurrections,—the execution of seventy-two thousand rogues, great and small, even during the reign of Henry VIII.—a period of only thirty-seven years and nine months,—need not after this excite surprise; they were the necessary consequence of the change of manners and of the policy pursued. The evil in time effected its own partial cure; yet, even in the reign of Elizabeth, though some mitigation of the general misery was found in the poor's laws then devised,†

* In a book entitled the *Supplication of the Poor Commons*, published in 1546, from which Strype extracts some passages, we have the amplest proof of this. Tenants of abbey lands were daily dismissed by the new proprietors: and such was the rapacity of the last, that the former did not derive security from their leases, though these were specially provided for in the statute. 'When they' (the new proprietors) 'stand once seized in such abbey lands, they make us, your poor commons, so in doubt of their threatenings, that we dare do none other but bring into their courts our copies taken of the convents and of the late dissolved monasteries, and confirmed by your high court of parliament. They make us believe that, by virtue of your highness, all our former writings are void and of no effect: and that if we will not take new leases of them, we must then forthwith avoid the ground as having therein no interest. Moreover, when they can espy no commodious thing to be bought at your highness' hand, they labour for and obtain leases for twenty-one years in and upon such abbey lands as lie commodious for them. Then do they

dash us out of countenance, with your highness' authority, making us believe that by virtue of your highness' lease, our copies are void: so that they compel us to surrender our former writings we ought to hold, some for two and some for three lives, and to take by indenture for twenty-one years, overing both with fines and rents beyond all reason and conscience.'

They state that such possessors as were heretofore able, and used to bring up their children to learning, were now obliged to set them to labour, while the poorer classes could not procure work for theirs, 'though they proffered them for meat, drink, and poor clothes to cover their bodies' (Strype's *Ec. Mem.* vol. i. p. 399).

† The poor's laws have been productive of much mischief; but, at the time of their introduction, they were absolutely necessary: for the poor must otherwise either have perished or destroyed the rich; and the consequences were beneficial to the whole community at the time. The provision for the poor enabled them, to a certain extent, to purchase food, and being so much withdrawn from the rich, which they would have expended on foreign

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'Thieves,' says Harrison, 'were trussed up apace, and three hundred and four hundred were commonly eaten up by the gallows every year.' As for beggars, they were so numerous, that, observes he, 'though the punishment be verie sharpe, yet it cannot restraine them from their gadding, wherefore the end must needs be martiall law.'*

The general distress opened men's minds to the effects of over population. The towns, by obtaining and enforcing exclusive privileges, and by at least concurring in general laws to prevent the influx of inhabitants from the country, and the lower ranks by their complaints of, and rage against, the employment of foreigners, discovered sound knowledge on the subject.† And we learn from Harrison directly, that the prevalent opinion in his time—he published in 1577—was, that the number of mankind was excessive. 'Certes,' says he, 'a great number com-
plaine of the increase of pouertie, laieing the cause upon God, as though he were in fault for sending such increase of people or want of wars that should consume them, affirming that the land was never so full.'‡ Again, 'Some affirme, that youthe by marrying too soon doo nothing profit the countrie; but fill it full of beggars, to the hurte and utter undooing, they say, of the common-wealth.'§ In another place, where he treats of the

superfluities, obliged the latter to put more of their lands into tillage. This afforded employment to many; and as the labourers thus employed, as well as those supported by the assessments, required coarse garments manufactured at home, fresh hands would find work in supplying such articles; and these, being again in a condition to purchase food, would react upon agriculture. Some beneficial Acts, to exclude foreign manufactures, and advance the home, were passed in Elizabeth's reign (Ander. on Com. vol. ii. p. 120); but the monopolies were numerous on the other hand.

* P. 184.

† Anderson's *Hist. of Com.* vol. ii. The great riot in London on May-day, in the reign of Henry VIII., was directed against the foreigners, who were accused by the people of engrossing the trade and manufactures of the nation (Halle, p. 59 *et seq.*). By 14 and 15 Henry 8, c. 2, aliens were prohibited from taking aliens as apprentices; and no alien was allowed to have more than two aliens as journeymen at one time.

‡ P. 193. The whole page presents a picture of the utmost wretchedness.

§ Harrison, p. 205. He says, that

causes of begging, and attributes it partly to the griping avarice of great families, who found pretexts 'for wiping manie out of their occupieings,' he says, 'the better minded doo forsake the realme for altogether, and seek to live in other countries, as France, Germanie, Barbarie, India, Moscouia, and verie Calecute, complaining of no room to be left for them at home.' 'Yet the greater part, commonlie having nothing to staie upon, ar wilfull, and thereupon doo either prooue idle beggers, or else continue starke theeues, till the gallowes doo eat them up.' *

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Having shown how the revolution in manners affected the people, it remains to trace its consequences upon the government. During the plenitude of aristocratic power, the lower country population, possessed of independent means of subsistence, must, for their own security against aggression from great families, have sought the alliance of potent neighbours. These would generally be of the gentry, as their jealousy of the peerage would induce them to desire the support of numerous allies, that they might be enabled to withstand the influence of that body and buoy up their own class; and they would retain the attachment of the lower ranks by procuring laws beneficial to them. But men of independent circumstances would submit no longer to the degradation of such patronage than was requisite for their own security against injury and insult. Communes, in his time, remarked that the English people were jealous of the aristocracy; and when the change of manners had abridged the power of the higher ranks, the lower would be ready to support the throne in extending its authority, that it might fully reach a class whose influence in the

'the twentieth part of the realm is employed on deer and conies;' and justly remarks, that 'privileges and faculties are also another great cause of the ruins of a commonwealth, and diminution of mankind: For whereas law and nature dooth permit all men to liue in their best manner,

and whatsoeuer trade they be exercised in there commeth some privilege or other in the waie, which cutteth them off from this or that trade, whereby they must needs shift soile and seeke unto other countries' (B.).

* Harrison, p. 183.

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community was equally hurtful to the prerogative, and subversive of the public happiness. The extensive transferences of land afterwards increased the influence of the inferior gentry, as they diminished that of the higher, as well as of the nobility: for new men, as they are most obnoxious to aristocratic pride, are commonly the most spirited in resenting insult, and the ablest to improve the natural influence of their station. Power, that threatens all alike, is not so much an object of apprehension with any particular class, as that which proceeds from a body but a little removed from itself; and the inferior country ranks, therefore, would, without calculating upon the distant problematical consequences of an undue preponderance in the Crown, throw all their influence into its scale, that it might reduce the still formidable power of the great aristocracy, and raise their own respectability, by depressing those above them. The Star-Chamber was the most arbitrary institution ever known in England; yet the illegal extension of its authority, during the reign of Henry VIII., must have gratified the lower ranks, as its avowed object was to bring within the sphere of justice men whose situation raised them above the reach of ordinary jurisdiction, and to teach them that their inferior neighbours should not be aggrieved without the hope of remedy.

Large towns commonly give the tone to public opinion; and these had daily obtained a great accession of strength, both by the improvements in the mode of life, and by the decay of provincial towns—while the increasing wealth of the country, and the transferences of land, rendered the citizens less dependent on any particular class of customers. If they were not, in former times, prone to support the aristocracy, who envied their prosperity, and despised their habits, they would be less so now that the change of manners made great families more sensible of any approach to rivalry in expenditure, and the citizens more apt to affect it from their increasing wealth. While,

therefore, the prerogative was likely to come into contact chiefly with the aristocracy, towns would be, in most cases, disposed to support it. The literary men, too, in that age, being patronised by the Crown, inclined to direct the current of public opinion in its favour.

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The advantages which Henry derived, at his accession, from the state of the aristocracy, and his own personal qualities, have already been detailed ; but it remains to be stated, that the disordered frame of civil society, in consequence of the dismissal of dependents from estates, naturally induced the higher ranks to desire measures which, however innocuous they might appear at the time, formed precedents dangerous to public liberty : for mankind seldom reflect upon the problematical consequences of measures which liberate them from present calamities ; and neither person nor property being safe from the numerous banditti that infested the kingdom, while repeated insurrections threatened the very existence of social institutions, the people neither weighed the distant consequences of impressments which swept off the idle, nor of a resort to martial law, which promised relief from such harassing evils. Though, therefore, speculative politicians entered their protest against the use of martial law, when it could possibly be avoided, the bodies of men who possessed influence frequently solicited commissions to authorise it. But it ought never to be forgotten, that these commissions were never executed, except in cases of actual insurrection ; nay, the greatest legal authorities held that the execution of them under other circumstances would have been murder in the agents : * and that the aristocracy themselves generally raised the armies, while the prince was often disposed, even in cases of actual insurrection, to adopt milder proceedings towards a class whose misery he deplored. It

* See this subject discussed in the next chapter, under the head of 'Martial Law.'

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was chiefly his clemency to the poor, and his resistance of sanguinary measures, which raised such a host of enemies against the Duke of Somerset, protector to Edward VI., as, in spite of the regal power with which he was invested, brought him to the scaffold.*

From so many circumstances, the current set in strongly in favour of the prerogative, and Henry knew how to avail himself of his situation. 'It was his manner always,' says Herbert, 'with great industry to procure members of parliament well affected to his service.'† He generally kept up a good correspondence with both houses, and was seldom disappointed in his expectations but in regard to supplies, which, as they in those times deeply affected the members themselves, were granted with reluctance‡. He had allowed himself at one period, however, to be deceived by appearances, or to be misled by his councillors, into the erroneous belief of a predisposition in the people to submit to any measures of the court: for he ventured to violate the fundamental principle of the constitution by an attempt to impose a tax without the assent of the legislature; but the attempt raised such a spirit of commotion, that he perceived the propriety of recalling the warrants, and disavowing the measure.§ It was in religious matters, after the commencement of the Reformation, that parliaments, during this reign and the three following, showed themselves inclined slavishly to adopt suggestions from the Throne, and the conduct of Henry and his suc-

* Strype's *Ec. Mem.* vol. ii. pp. 152, 167, 169, 171, and 183; Burnet, vol. v. p. 327. It would appear that some foreign troops had been entertained, but it disgusted the people (*Ib.*). The nobility and gentry, however, seem to have been employed against the people, and they desired sanguinary measures (Strype's *Ec. Mem.* vol. ii. c. 21).

† P. 218. In 1614, Sir Roger Owen, member of the Lower House, ascribed the fall of Cromwell (Henry's

minister) to his having unduly interfered with elections (*Jour.* 2nd May, p. 470).

‡ Burnet, vol. i. p. 16.

§ Holinshed, vol. ii. p. 891; Halle, p. 137 *et seq.*; Herbert, pp. 66 and 67; Burnet's *History of Ref.* vol. v. pp. 36 and 37 (Burleigh's Paper to Elizabeth). Wolsey afterwards pretended that he merely wanted a benevolence, but he was answered with law.

cessors was chiefly distinguished by an arbitrary character; but when we examine the causes of that acquiescence, we discover them in the circumstances and feelings which attended the Reformation itself. As this is, however, a subject which deserves investigation, it will not be improper to enter into some detail.

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Even in the darkest ages, there were instances of individuals who impugned the authority of the Popish yoke and gained a few proselytes; but it was reserved for Englishmen to disclaim the dominion of the Papal See with the first prospect of success.* Popular movements have commonly been ascribed to the principal actors in them, as to their authors; but the utmost that can be accomplished by individuals, in such cases, is merely to avail themselves of a happy predisposition in the public mind to give form and consistency to loose opinions, and to bring to the aid of an infant sect or party the weight of talent, learning, and character or station. They may thus strengthen and direct the current; but if they be wise beyond their age, they must expect the just appreciation of their views from an enlightened posterity. Thus it happened with John Wickliffe, to whom the first grand attempt at reformation has been attributed. Previous attempts, as we have observed, had proved abortive, because the times were not ripe for a change; but the merit of Wickliffe lay in seizing the favourable moment for disseminating his doctrine. In most of his principles he had been in a great measure anticipated, even by writers whose names are forgotten;† but the profoundness of his learning, and greatness of his abilities, enabled him at once to take the lead, and thus gave to the sect the name of its champion. This eminent individual was reader of divinity at Oxford, and began to broach his opinions about the year 1371. His most inveterate ene-

* See Fox's *Martyrs*, vol. i. for an account of reformers long before Wickliffe's time.

† Fox, p. 521 *et seq.*

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mies, while they endeavour to blacken his memory with the imputation of vices, and of many profane as well as ridiculous tenets, do ample justice to his great endowments; and it may be remarked, that the slander of Pol. Vergil *—that he acted from disappointment in his ambitious hopes of reaching the highest honours in the church he abandoned—is really a tribute to his character for talent and learning. Instead of the timidity for which, at a more enlightened period, the Saxon reformer was remarkable, Wickliffe and his party at once struck at the root of the evil, disclaiming alike the supremacy of the Pope, and the tenets and practices—such as purgatory, the real presence in the eucharist, the tutelar protection of saints, the adoration of images, auricular confession, pilgrimages, the effect of baptism, celibacy of the clergy, &c.—which peculiarly distinguished the Romish persuasion, and boldly appealed to the Scriptures as the only rule of faith. Qualified equally by nature and by his uncommon attainments to be the leader of the sect, he did not permit his talents to rust in inactivity; for, besides translating the Scriptures into English, he is said to have written about two hundred books, the majority of which were preserved till the sixteenth century against all the efforts of the clergy to destroy them.† That body were particularly offended at the translation of the Scriptures, by which, they alleged, the evangelical pearl was cast abroad, and trodden under feet of swine. ‘*Sic evangelica margarita spargitur et à*

* Pol. Verg. l. xix. pp. 399, 400. After having said that at that time there existed many learned and brave men, he observes:—‘*Exitere et aliqui insigni infamia, quorum caput et princeps fuit Joannes Wythcliffus: is, ut fama est, à primo indignatus, quod non potuisset ad summos sacerdotalis ordinis aspirare honores, factus inde sacerdotibus cunctis inimicior, cepit divina scripta perversè interpretari, atque novam instituere sectam,*’ &c. The character of Wickliffe, for

talents and attainments, is thus given by a contemporary historian of great credit, and who, being a monk, and an inveterate enemy, is in this respect the more to be trusted:—‘*In philosophiâ nulli reputabatur secundus, in scholasticis disciplinis incomparabilis. Hic maxime nitebatur aliorum ingenia, subtilitate scientiæ, et profunditate ingenii sui transcendere, et ab opinionibus eorum variare*’ (Knighton, p. 2644).

† Henry’s *Hist.* vol. viii. p. 234.

conculcatur.* His followers went about preaching spel, barefooted, and clothed in russet; and, as the city of their dress made a deep impression on the people, their enemies likened them to the false prophets—ravenous wolves in sheep's clothing—of whom Christ forewarned his disciples. Their doctrine, however, attracted many amongst the high classes, and even amongst the people, from a more impure cause; for they declaimed violently against the monastic institutions and the property of the church, and went so far as to assert that it was not only lawful for the temporal lords and gentry, but incumbent on them, under pain of damnation, to seize the possessions of any delinquent church; and that the revenues were purely eleemosynary, and might be withheld from the people upon a delinquency in the pastor, and transferred to another at pleasure.† Great prospects thus opened to the higher classes to advance the infant creed; and that motive Walsingham attributes the success of the new sect in obtaining so many high proselytes. ‘Eodem maximo, quia potestatem tribuerunt laicis, suis possessionibus, ad auferendum temporalia à viris ecclesiasticis religionis.’‡ It is not so wonderful, therefore, that a temporary monkish historian should endeavour to blast the credit of the reformer, by alleging that he had John the friend of Wat Tyler, as his precursor, who prepared the way for him by similar opinions. ‘Hic habuit

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Knigh-ton, p. 2644. ‘Principales Lollardi, primâ introductione sectæ nephandæ, vestibus deutebantur pro maiore parte, quasi simplicitatem cordis ostentes exterius, ut sic mentes eorum se subtiliter sibi attrahere laborem docendi atque seminandam doctrinam, securius ferrentur. De talibus, enim, loquens dominus in evangelio docens credere ab eis, ait, enim, attendite prophetas, qui ad vos veniunt vestimentis ovium, intrinsecus autem sunt lupi rapaces’ (p.

2663). See also Walsingham, *Hist.* p. 191.

† Walsingham, *Hist.* p. 191; *Epilog. Neust.* p. 531. Knigh-ton gives the particular charges of heresy against Wickliffe; and by these he is accused of having gone a little farther than what is stated in our text—‘Quod domini temporales possunt ad arbitrium auferre bona temporalia sibi ab ecclesiâ habitualiter delinquente, vel quod populares possunt ad eorum arbitrium dominos delinquentes corrigere’ (p. 2648).

‡ Wals. *Hist.* p. 191.

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præcursorem Johannem Balle, veluti Christus Johannem Baptistam, qui vias suas in talibus opinionibus præparavit, et plurimos quoque, doctrinâ suâ, ut dicitur, perturbavit.* Amongst the favourers and patrons of Wickliffe, were John of Gaunt (on whom the government chiefly devolved in the old age of Edward III.) and the Lords Percy, Latimer, Montague, &c., † who are accused, by a cotemporary historian, of having served the cause with other weapons than the spiritual. When a preacher arrived

* Knighton, p. 2644. See also p. 2055.

† Knighton, p. 2061. Wals. *Hist.* p. 328. Knighton, after mentioning that these great men patronised the sect, proceeds thus:—‘Isti erant hujus sectæ promotores strenuissimi, et propugnatores fortissimi; erantque defensores validissimi et invincibiles protractatores. Qui, *militari cingulo ambiebant ne a rectè credentibus aliquid opprobrii aut damni propter eorum prophanam doctrinam sortirentur*; nam zelum dei habuerunt, sed non secundum scientiam. Crediderunt namque vera fuisse quæ à pseudo-doctoribus audiebant, et sic vani facti sunt in cogitationibus suis, et eis similes in voluntatibus suis, factique sunt cives et domestici eorum. Cumque aliquis pseudo-prædicator ad partes alicujus istorum militum se diverteret prædicationis causa, incontinenti, cum omni promptitudine populum patriæ convocare et ad certum locum vel ecclesiam cum ingenti sollicitudine congregare satagebat ad audiendum voces eorum *licet invitos*, resistere tamen vel contradicere non audentes, ac si cum prophetâ clamaret et ceret, *si eum audire nolueritis, et me ad iracundiam provocaveritis, gladius devorabit vos*. Nam assistere solent juxta sic inepte prædicantes, *gladio et pelta stipati* ad eorum defensionem, ne quis contra eos aut eorum doctrinam blasphemam aliquid temptare vel contradicere quandoque auderet. Et sic dejecto humilitatis flore, quos non potuerunt ratione, gladii timore sæpissime ac-

quisierunt. O Christi doctrina mitis, humilis, et mansueta! O repugnans nephandorum disciplina superba, gladiata, invidiæ et detractationis plena! Christi namque doctrina est, si quis vos non audierit, exeuntes excutite pulverem pedum vestrorum in testimonium illis. Istorum Lollardorum sive Wyclivianorum disciplina longè aliter se habet. Si quis vos non audiet, vel contra vos aliquid dixerit, eximite gladium et eum percutite, aut *lingua mordaci famam ejus vulnerate*. Nam solent isti nephandi hujus sectæ doctores dicere, quod nulli eis contradicunt, nisi solum peccatores et maligni seu vitiati’ (pp. 2061–62. See also p. 2064.) How many are the ways of self-deception! Every sect proclaims the impiety, injustice, and cruelty of persecution; yet most are too ready to think it proper against all that oppose their particular views; and the author who could write thus was amongst the number. Wickliffe’s enemies are abused by Protestant writers for defaming him; yet he himself set the example. Knighton tells us that invective and detraction were the means his sect took to advance their doctrine (see p. 2064). He is alleged to have said—‘Nullus sacerdos in aliquam domum intrat, nisi ad male tractandam uxorem, filiam, aut ancillam, et ideo rogabat ut mariti caveant ne sacerdotem aliquem in domum suam intrare permittant’ (p. 2070.) But far more flagitious crimes were imputed to the established clergy (see Fox’s *Martyrol.* vol. i. p. 662—Book of Con-

any particular place, they assembled the people even against their wills, and obliged them patiently to listen to doctrine, under the threat of instant execution. The author tells us that, by the indefatigable industry of sectaries and their patrons, more than half the king- were drawn to their party.* On this subject, I cannot, think, do better than refer to a note by Dr. M'Lean, in translation of Mosheim's *Eccles. History*, vol. iii. p.

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† England had long been tame in submitting to ecclesiastical tyranny. Livings were presented to foreigners never entered the kingdom, whence annates, firsts, &c.; and, by appeals to Rome, justice was obstructed, and the common law threatened with subversion. ‡ To remedy these evils, several laws had been

was exhibited to parliament); but the imputations were admitted rather as inferences from their policy than as well-known facts. However, we ought to distrust theories so industriously circulated at the religious houses at their session in the time of Henry

When men are determined under an establishment, they fail in a pretext to justify their tyranny.

(Knighton, p. 2064. The same author tells us that the nation was leaved with schism, and all the ties of life destroyed. Fathers incited against their children, sons against their parents, brothers and neighbours against each other, and servants against their masters. *Ib.*). For a particular account of Wickliffe, his followers, and doctrine see Knighton, p. 2044 *et seq.*;ingham, *Hist.* p. 191 *et seq.*; *Pol. Neust.* p. 531 *et seq.*; *Pol. Ang. Hist.* l. xix. pp. 399, Fox's *Martyrol.* vol. i. p. 106 *et seq.*; Holinshed, vol. ii. p. 106 *et seq.*; Speed, p. 588; Fuller's *Hist.* book iv.; Daniel's in White Kennet, p. 232 *et seq.*

This author, who was a courtier under James I., satirically remarks that 'Wickliffe's doctrine was very pleasing to great men, who embrace sects either through ambition to get, or fear of losing, or through hatred, that they may revenge themselves' (Ken. Col. reigns of II. 4 and II. 5).

† This new sect were called Lollards; but the origin of the name is so involved in obscurity and doubt that I forbear to hazard an opinion on the subject.

‡ See Blackstone's *Com.* vol. iv. p. 106 *et seq.* Fox gives us 'notes of the parliament holden in the 20th yeere of King Edward III.,' when alien cardinals, and other strangers who held livings in the English church, were ordered to depart out of the kingdom; and this is a paragraph of these notes—'That such alien enemies as be advanced to livings heere in England (being in their own countries shoemakers, tailors, or chamberlains unto cardinals) should depart before Michaelmas, and their livings be disposed of to poor English scholars' (vol. i. p. 551; see Halle, p. 11).

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As Henry IV. was raised to the throne by the popular voice, people were flattered with the hope of greater compliance with their wishes: and besides that the conspicuous part which his father had taken in regard to Wickliffe induced them to expect a similar predilection from him, he had been formerly heard to say that princes had too little, and the clergy too much§. On that ground alone, an insurrection instigated by a favourite

* The first act against Papal provisions, and which was the foundation of all future statutes against this abominable usurpation, was 30th Ed. I. (see *Coke's 2nd Inst.* stat. De Asport. Religios. p. 586). The other statutes are likewise commented on, under this head, see also *3rd Inst.* of Premunire, and Blackst. *Com.* vol. iv. p. 107 & seq. The Pope condemned the statute of Premunire as 'arbitrary,' and called the passing

of it 'sedition & turpe facinus' (Ful. *de Hist.* p. 148. Wh. *Ken.* vol. i. p. 272).

† *Baron's Hist. of Ind.* vol. i. p. 24. edition 1820. see Commission against the Lollards in Holinshed, p. 48.

‡ *Id.* p. 486. Wh. *Ken.* p. 272. edition 1820. Hader. fol. 11: *Baron's Hist.* vol. i. p. 254. Hayward's *Life of Henry IV.* p. 254; *Ken.* p. 272.

astic of the late king, who circulated that Henry to attack the temporalities of the church, was against him at the beginning of his reign. But now, as monarch, a different interest, while hisious tenure of the throne, and the state of parties, to have forced him into a fluctuating policy. He been greatly indebted to some eminent ecclesiastics sing him to the throne;* and their active ascen- at first seems to have operated strongly in the ons of the Commons. Before the government had ed some stability, and while the deposed Richard ill alive, or believed to be so, they only would e to stand forward as legislators who had decidedly a part in the transactions, and union with the es was necessary for their safety. This accounts e law which was passed in the 2nd of Henry IV. t the Lollards, being the first that authorised the ig of heretics.† But in the sixth of the same reign, ower House, in a parliament held at Coventry, d itself composed of such opposite materials, that it r projected the transference of the church property Crown. The kingdom was at this time threatened war by the Scots and Welch at home, and by the b, Flemings, and Britains from abroad; and though, arliament which had been held this very year xminster, so unusual a tax had been imposed that o houses thought it expedient to destroy the record

omas Arundel, Archbishop of ury, who had been banished ard, was one of the principal tors for deposing that mon- l substituting Henry. Scroop, hop of York, too, and other tics of great note, were very ntal (see Hayward's *Henry 7als.* pp. 358, 360; Fabian, t, p. 153; Holinshed, p. 495 Ken. p. 282 *et seq.* Grafton, Fuller's *Church Hist.* b. iv. This writer is, however, a irical against the clergy, for

he does not scruple to use these words:—'Thus, in all state altera- tions, the pulpit will be of the same wood with the council board.' All the prelates, &c., embraced the side of the victorious Henry at the outset, except the Bishop of Carlisle, who was attached of treason for his speech against the deposing of Richard (see Ful. as to the cause of Henry's persecution of the Lollards, p. 155).

† Burnet, *Hist. of Ref.* vol. i. p. 45.

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of it, that it might not exist as a precedent against them,* a great supply was still required for the public exigencies, and the Commons seized the favourable juncture for proposing a grand blow against the ecclesiastical property.

Both houses had, by way of conference about the posture of affairs, as it would appear, been assembled in the royal presence; where the Commons complained that, while they not only supplied the king's necessities against all his enemies, whether internal or external, but exposed their persons to the privations and dangers of war, the clergy did nothing for the king, spending their revenues in idleness and sensuality at home; and therefore they proposed that the property of the church, which was a third of the kingdom, and might afford a revenue amply sufficient for all the exigencies of government, should be appropriated to the Crown. A great altercation immediately ensued with the spirituality; and the primate, in defence of the church, answered, that the clergy were unjustly accused of not supporting the Throne, for that they were more liberal in their grants than the laity, frequently giving tenths when the other only gave fifteenths; that, though their calling prevented them from personally attending the king in his wars, they as effectually served him even there, by means of their tenants, who took the field in greater numbers than those of the laity; and that themselves were in the meantime day and night employed in his service by imploring the Divine favour upon all his undertakings. The prolocutor of the Commons, Sir John Cheney (who is said to have been once in deacons' orders,

* Wals. *Hist.* p. 369. 'In hoc parlamento concessa fuit regi, taxa insolita, et incolis tricabilis et valde gravis. Cujus modum præsentibus inseruisssem, nisi concessores ipsi, et authores dicti tallagii, in perpetuum latere posteros maluissent: nempe sub eâ tantum conditione concedebatur, ne traheretur posterius in exem-

plum, nec servarentur ejus evidentie in thesauria regia, nec in scaccario, sed scripturæ vel recordationes ejusdem protinus post datum compotum cremarentur. Nec emitterentur brevia seu commissiones contra collectores vel inquisitores hujus negotii de melius inquirendo.' See also *Mod. News.* p. 561.

out to have deserted the church for the camp, and to have been actuated by the feelings of an apostate), made some contemptuous remarks upon the prayers of the clergy, which provoked a severe reprehension from the archbishop, who told the Commons that no state could stand without religion; but that since piety could not restrain them from so sacrilegious a project, prudence ought, as they might find that the church could make a powerful resistance; and he warned them that, while Canterbury lived, its patrimony should not be wrested from it without a struggle. Then approaching the king, who had appeared to assent to the proposal of the Commons, and falling on his knees, he reminded the monarch of his oaths to preserve the church, and of his duty to that Heavenly King by whom earthly ones reign. Henry desired the archbishop to return to his seat, assuring him that he had no intention to plunder the church, but would leave it greater than he found it. Thus encouraged by the assurance of the royal favour and protection, the primate again addressed the Commons, telling them that they in vain thought to deceive him by veiling their unprincipled avarice under the cloak of supplying the wants of the Crown, for that even past events had sufficiently evinced that it was not the public service which they intended to promote by such a proposal: that they, and such as they, had, under the same pretext, advised the king and his predecessors to seize upon the property of the small religious houses of French and Norman friars within the kingdom, but that the Crown had not been in the slightest degree enriched by such property, as these advisers had never ceased to beg or extort it till they had got it all: and that he would predict that, were the present sacrilegious proposal acceded to, the monarch would not be one farthing richer by the year's end. 'But,' continued he, 'sooner will I part with this head from my shoulders than that the slightest encroachment shall be made upon the church's patrimony.' The Commons made no reply; but

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on their return to their own house, they were not diverted, either by what had fallen from the Throne, or by the threats of the archbishop, from a keen prosecution of their purpose. To oppose every barrier to such a scheme, the archbishop successfully courted the support of the temporal peers, with whose alliance the clergy effectually resisted the project; and the Commons having granted two-fifteenths, under condition of its being entrusted to Lord Furnival, &c., to be expended on the particular service for which it was required, and having recalled some annuities which had been given to individuals by the king, affected regret for their sacrilegious attempt, and promised not to renew it.*

In assisting the clergy to repress the schemes of the Commons, the Lords are said to have only made a return to the spirituality for supporting them in the rejection of bills, both in this and preceding parliaments, to resume for the Crown all its grants to the peerage, whether during the present reign or the two preceding; but it is easy to perceive that they were probably influenced by a nearer interest. They had originally patronised the Wickliffites, from the hope of sharing liberally in the temporalities of the church; but the ambition and boldness of the Commons, which not only disdained to act in concert with the peerage, but, by attempting the resumption of royal grants,† betrayed an indifference about offending them, were calculated to alarm that body, and, at all events, to alienate them from any attempt upon church property. For, if the

* Walsing. *Hist.* p. 371; *Ypod. News.* p. 563; Holinshed, vol. ii. p. 526; Ken. p. 200; Hayward's *Hist.* p. 254; Cob. *Parl. Hist.* vol. i. p. 295.

We have in the present grant by the Commons, a proof of the condition on which money was so often given. Walsingham states the fact without thinking it worth a remark.

† It was quite a common practice for parliament to resume the royal

grants (see Prynne's preface to Cotton's *Abridgment of the Records*, where he gives many instances of it, and refers correctly to many authorities); but when the Commons were grasping so greedily at the church property, it afforded no favourable augury of their intentions towards the Lords that they pretended to be so deeply affected by the public interest as to recall the paltry grants from that body.

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Commons were really actuated by the selfish motives imputed to them by the primate, it is quite evident that the same confidence in their own strength which, in attempting the measure, made them negligent of co-operation with the temporal peers, would lead them to anticipate all its fruits for themselves; and it cannot be denied that, had their confidence in the first been well founded, they could scarcely have failed in the last. But the peerage had cause also to suspect that the monarch favoured the views of the Lower House, and consequently that he intended to distribute the property amongst the Commons, which would give that body a preponderance in the state equally injurious and dangerous to the pre-eminence of the nobility.*

Henry had the prospect of a grand game. The popularity which raised him to the throne, deserted him the instant it had seated him there; and his government was daily threatened with plots and insurrections, which, if successful, would not merely have dethroned him, but, in all probability, proved fatal alike to himself and his family. To prop this tottering dynasty, nothing could be more effectual than the distribution of vast property amongst such a numerous body as could muster a strength ready at all times to crush every attempt at rebellion; for, owing their property to a particular family, they could not expect to retain it upon a change of dynasty, when the authors of this greatness were branded and

* It may be asked by some unreflecting reader, why Henry did not desire the transference of church property to the Crown, that he might retain it? But the answer is obvious: he knew that it was utterly impracticable. The church was not only powerful in itself, but, according to the highest computation which appears to have been made of the Lollards, had about half the kingdom to support it. Its property, therefore, could not have been taken without a violent shock; and though the Com-

mons were anxious to give it to the Crown in trust for themselves, that it might be distributed amongst them, they would have probably joined the ecclesiastical body in recalling it, had their hopes been disappointed; at all events, the king never would have been supported in what, by giving such an overwhelming preponderance to the Crown, threatened the whole community, and then inevitable ruin must have awaited so foolish a step.

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punished as usurpers. The church, however, possessed about a third of the national territory, and that, judiciously distributed, promised to establish the present dynasty beyond the fear of fall. Though this view has not been ascribed to Henry, some parts of his conduct, as well as the proposals of the Commons, which were afterwards more systematically made, indicate that he had entertained it. and only protected the church when he perceived the impracticability of plundering it. There had been a statute or ordinance passed in the 46th of Edward III. A.D. 1372,* to render lawyers ineligible to the Lower House, on the ground that 'they procured and caused to be brought into parliament many petitions in the name of the Commons, which in nowise related to them, but only to the private persons with whom they were engaged;' but it does not appear to have been acted upon till Henry, upon summoning the parliament in question, directed the writs, with a clause of *nollumus*, against the election of that class, alleging that, at the previous parliament, the lawyers had needlessly protracted the business.† However the interests of the clergy and

* See late pub. of *St. of the Realm*. Prynne was at pains to prove that statutes and ordinances are synonymous; but it was unnecessary, as both are acts of the legislature.

† This parliament was styled in derision the *Parliamentum Indoctorum* (Wals. *Hist.* p. 371; *Ypod. Neus.* 563). Walsingham mentions only the shires in speaking of the clause of *nollumus*; but Holinshed mentions cities and towns also (vol. ii. p. 526). Sir Ed. Coke, *4th Inst.* p. 10, alleges that Walsingham was deceived, for that there is no such clause in the writs; and that the matter was accomplished by letters directed to sheriffs, &c., by pretext of an ordinance in the Lords' house, 46th Ed. III. But Prynne, by quoting the words of the writs, proves that Walsingham was correct; and

he properly shows, at the same time, that the 46th Ed. III. was not an ordinance of the Lords, but an act of the legislature. It is curious, however, to observe, that while Prynne is mercilessly correcting Coke, he has fallen himself into a very strange blunder, for he ascribes the *taxa insolita et tricabilis* to the *Parliamentum Indoctorum*; and, after citing Walsingham's words about excluding the lawyers, he proceeds thus, 'To which he subjoins in his *Ypodigma Neustria* this observation:—In hoc parlamento concessa fuit regi taxa insolita,' &c. Now, the passage in the *Ypodigma* is an exact transcript of one in the history upon that very subject; and had Prynne done more than just turn up the book for this insulated point, it is inconceivable that he should not have observed this, and also that the unusual tax

the legal profession might occasionally clash, there were many strong bonds of connection between them. The extent of the church property, under the dominion of the clergy who were actuated by the spirit of a corps, gave the clergy great influence over the lawyers, in the way of patronage, during an age in which there was so limited opportunity for talent and enterprise. In more ancient times, the clergy not only acted as barristers,* but members of that profession were frequently promoted to various judicial departments,† while the greatest legal office was still invariably bestowed upon an ecclesiastic.‡ Evidently of these circumstances, it was obviously the interest of the lawyers to protect the church, in order that they might, by its assistance, occupy a respectable position against the aristocracy—particularly as, from their own inability to serve the prince in a military capacity, they could not expect to derive any advantage from the ruin of the establishment. Hence a strong motive arises that Henry was anxious, on account of his predilection, to exclude them from a voice in the

acted by a parliament held at Westminster, while the late learned parliament (which was held at Coventry) is an ordinary one, and distinctly different. Prynne's error is the more evident that Holinshed and other authors who transcribe from Whitelock, do not fall into it. But it is evident that Whitelock had committed the same mistake in a speech which he has preserved in his *Memories* (p. 431). As his object was, by that speech, to dissuade the parliament from rendering the lawyers ineligible, it is possible that it was a voluntary one. He states that Henry adopted the measure because he knew that the lawyers would oppose any extraordinary measure of money; but that class are commonly so very patriotic. I think that Prynne derived his information from Whitelock; or that, as

Prynne's works are numberless, Whitelock may have scraped it from some of them. *N.B.*—The part of Prynne's works alluded to is his preface to Cotton's *Abridgment of the Records*.

* Henry, vol. viii. p. 180. This author ascribes the statute 46 Ed. III., which rendered lawyers ineligible to parliament, to the disgrace into which the profession was brought by the chivalrous spirit of the age, so that few men of probity and credit would enter into it (vol. viii. p. 148). For this he quotes Cart. vol. ii. p. 482. But a very different reason is assigned for their exclusion in the statute itself; and the very circumstance of their having been so often elected is the most irrefragable proof of their general respectability.

† *2nd Inst.* p. 264.

‡ Henry, vol. x. p. 70; vol. xii. p. 227.

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With Henry's situation, half-measures were incompatible, and having declared against a measure which appeared to have been visionary, he endeavoured to conciliate the clergy, and affected to testify his abhorrence at the project by persecuting the Lollards.* But the failure of one attempt, and the conduct of the king, did not deter the Commons from a second, in the eleventh of the same reign, when the project was reduced to a more regular form. In their bill, introduced by Sir John Oldcastle, Lord Cobham—a proceeding which created so much animosity against him on the part of the clergy as afterwards brought him to the gibbet, with the further penalty of having his body burned while in that disgraceful state of suspension†—the Commons set forth that, while the laity sustained the burdens and dangers of the wars, the revenues of the church were lewdly spent by bishops, abbots, and priors, &c., but that those revenues might be converted to better purposes, and ought, therefore, with that view, to be transferred to the king; that out of them fifteen earls, fifteen hundred knights, and six thousand two hundred esquires might be created, with ample revenues; while from the same source fifteen thousand parish priests, who would more regularly perform the duties of their sacred function than the present clergy, might be adequately supported, and a clear revenue besides of 20,000*l.* per annum be reserved by the Crown. This

* Fox's *Martyrol.* vol. i.

† *Parl. Hist.* vol. i. p. 310.

pt was equally unsuccessful with the former, and is said to have gratified the clergy by checking the motions for their sacrilegious project, and refusing a r the abrogation, or, at least, mitigation of the statute l in the second of his reign against heretics, declaring e wished the law to be more severe ; and also ano- to have clerks convicted of crimes committed to the prison instead of the bishop's, from whence they often allowed to escape.* In spite of this second e, the Commons made a third and last attempt in the reign—only four years posterior to their former. pertinacity, together with the suspicions which the r entertained of the young king's propensities, dread- alarmed that body: 'the fat abbotes swet,' says , 'the proude priors frowned, the poore friars cursed, ly nonnes wept, and al together wer nothyng pleased et content.'† To divert the country from such a

als. *Hist.* p. 379; *Ypod.* 570; *Hol.* vol. ii. p. 536; a *Chron.* 3rd part, p. 189; , p. 208; *Parl. Hist.* vol. i.

In this last, an error of is corrected, who says that stead of 15 earls were spe- as capable of being created at fund; and it is observed apin quotes Walsingham for hority, who distinctly states and that the funds were to- adequate to 150 at the rate d. But the fact is, that Ho- fell into the same error, and apin had derived his informa- m him instead of the original. ing an account of the bill t into parliament in the 2nd ., however, Holinshed cor- rates fifteen.

lle, Hen.V.fol. 4. This author vere upon the monkish eccle- . 'You must understande,' , 'that these monasticall per- lerned and unilliterate, better n taught, toke on them to and register in the booke of the noble actes, the wyse s, and politike governaunces

of kynges and prynces, in whiche cronographye, yt a kinge gaue to them possessions, or graunted them liberties, or exalted them to honour and worldly dignitie, he was called a saynct, he was praised without any desert about the moone, hys gene- alogie was written, and not one iote that might exalt his fame was ether forgotten or omitted. But if a Chris- tian prince had touched their liber- ties, or claimed any part justly of their possessions, or woulde haue in- termitted in their holy franchises, or desired ayde of them against his and their common enemies; then tongues talked and pennes wrote that he was a tirant, a depressor of holy religyon, an enemy to Christe's church and his holy flocke, and a dampned and accursed persone with Dathan and Abiron to the depe pitte of Hel. Whereof, the proverbe began, geue and be blessed, take away and be accursed' (Hen. IV. fol. 11). Had the author looked a little abroad into the conduct of other classes, he would have had more charity for the poor monks.

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plan, the archbishop advised the king in open parliament to assert his right to the French throne; and the device, happily according with the warlike bent of the monarch, as well as dazzling the people with the prospect of such an extensive foreign conquest, withdrew public attention from the project of plundering the church, and the measure was never agitated again.*

We have been the more particular in relating this plan of seizing upon the temporalities of the church, both because it gives an insight into the springs of action under the most momentous circumstances, and because it completely disproves the view taken by Mr. Hume, of the estimation in which the Lower House of parliament was held at this period. That branch of the legislature which could have the boldness to conceive and the spirit to persist in such revolutionary schemes, was unques-

* Holinshed, vol. ii. p. 545 *et seq.*; Ken. p. 312, *et seq.*; *Parl. Hist.* vol. i. p. 324 *et seq.* See also Fox's *Martyr.*, about taking the temporalities of the church. There had been publications to that effect, vol. i. p. 711. After the conviction of Sir John Oldcastle (commonly called Lord Cobham by courtesy, in consequence of his having married the heiress of that family), which took place in the 1st Hen. V., there was a slight insurrection in his favour, which gave a great advantage to the ruling party (*Wals. Ypod. Neust.* pp. 576 and 577). For an account of Oldcastle, see Fox's *Martyr.*, vol. i. See also Howell's *State Trials*, vol. i.

The clergy laboured to alarm the prince, and also the nobility, into the belief that the Lollards would have all things in common; at all events, that the measures of that sect would disorganise society. This appears particularly from the charge against Wickliffe of his having had John Balle as a precursor, and from the ordinance of the Lords, 5 Rich. II., which was obtruded upon the nation

by that king and his clergy as an act of the legislature; wherein it is said of the Lollards, 'These persons do also preach divers matters of slander, to endanger discord and dissension betwixt divers estates of the realm, as well spiritual as temporal, in exciting the people to the great peril of all the realm;—they maintain their errors by strong hand and by great rout' (see late publication of *Statutes of the Realm*, vol. ii. p. 25, &c.). But it is needless to multiply authorities. As Oldcastle, who brought the bill into parliament against the clerical property in the 11th of Henry IV., sealed his faith with his blood, it may fairly be concluded that he was actuated by pure principles, and an inference may thence arise in favour of his coadjutors; but they, far from giving a similar testimony in their own favour, deserted their creed when they could not carry their measures, and he, in all probability, acted as much from the conviction that he never could accomplish his object without holding out such a bribe to the laity, as from enmity to the possessions of the church.

tionably not devoid of influence, or unimportant in the constitution.

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The doctrine of Wickliffe penetrated into other countries, particularly into Bohemia, where it diffused itself widely in spite of every effort to suppress it, even by the way of croisade at the instigation of the pope; but in England, as the aristocracy renounced all concern for it, when they despaired of obtaining the temporalities of the church, and as the new sect were exposed to severe laws and violent persecution, it declined till similar tenets were revived in a new form under Henry VIII. The human mind is so moulded by the circumstances in which it is placed, and so readily imbibes the current opinions, that if a change in religion do not proceed rapidly, it commonly fails. The doctrine becomes antiquated; zealots meet with no encouragement from public applause; and persecution, which, in the burst of enthusiasm, would have created proselytes by attracting a generous sympathy towards the martyrs, and consequently arming them with every sentiment that inspires fortitude under suffering, comes then accompanied with all the freezing feelings of general reprobation and despair of the cause.

The powers with which the clergy were armed by the legislature, for the suppression of heresy, enabled them to extend their authority, by confounding legal exertions against their usurped privileges, with attempts to disclaim the jurisdiction, and impugn the soundness of the church; and their arrogance, rapacity, and oppression seem to have been almost unlimited.* The charge of heresy was resorted to against everyone who denied them the most profound reverence, or resisted their unjust demands;—while their pleas of sanctuary and of clergy obstructed the criminal justice of the kingdom. Every reader of history knows that the clergy tried to exempt,

* Halle, p. 188; Holinshed, p. 911. One priest had often ten or twelve benefices.

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not only their own body, who were actually in orders, but all who could read, and demand the privilege of that sacred class, from the ordinary jurisdiction ; and the alarming height to which their insolence, and the privilege pleaded by them, were carried, are exemplified in what occurred during the reign of Henry VIII. In the preceding reign, a statute was devised to draw a distinction between mere lay scholars, or men who could read, and clerks actually in orders, by which the first were subjected to a slight punishment for crimes, and prevented from pleading the benefit of clergy a second time ; but the Act did not pass without censure from the church. By the 4th Henry VIII. c. 2, the benefit of clergy was denied to murderers and robbers who were not in holy orders ; but the law was so deeply resented by the priesthood, that they publicly branded it ‘as an Act contrary to the law of God and to the liberties of the holy church ; and it was maintained that all who had assented to it, as well spiritual as temporal persons, had incurred the censures of the church.’* The case of Richard Hunne, a merchant tailor in London, during the same reign, affords a melancholy proof of the use they made of the power with which they had been entrusted for the extirpating of heresy. He had been questioned by a clerk of Middlesex for a mortuary pretended to be due for a child of his that had died at five weeks old ; and as he resisted the demand, he was sued for the sum before the Ecclesiastical Court. In this predicament he consulted counsel, who advised him to prosecute the clerk in a premunire for bringing him before a foreign court, which the spiritual court then was, as it sat by authority from the Pope’s legate. A measure which struck so sensibly at the pretensions of the priesthood provoked them to such a degree, that they immediately attacked Hunne on a charge of heresy, and imprisoned him in the Lollards’ Tower. The poor man was soon

* Burnet, *Hist. of Ref.* vol. i. p. 21 *et seq.*, book i.

found strangled in jail, and, a jury having sat on the body, acquitted it of suicide, and charged the servants of the clergy with murder; but the verdict did not restrain the clergy from showing their pitiful malice upon the corpse. They sat in judgment on it; and having convicted it of heresy, delivered it over to the secular power to be burnt—a ceremony which was performed with all solemnity in Smithfield; they at the same time abused the jury as false perjured caitiffs, and interposed with the king to prevent an inquisition into the murder.* These proceedings, while they evince the extravagant pretensions and atrocity of the clergy, also, in the train of events, proved their folly. The Reformation by Luther soon began to convulse Europe, and circumstances of so crying a nature roused the attention of Englishmen; while the nobility and gentry, who complained grievously of the extortions of ecclesiastics,† were ready to embrace an opportunity to compensate their losses by a general plunder of the establishment.

Henry had early, by his polemical writings against Luther, distinguished himself as a champion of the church, and been complimented by his Holiness with a rose, &c., and with what he valued more dearly, the title of Defender of the Faith;‡ but enraged afterwards at the shuffling policy of the Pope in regard to the lawfulness of his marriage with his brother's widow, he cast off the Romish yoke. The measure accorded with the views of a great part of the kingdom; but of these a large portion were as yet incapable of renouncing the tenets of that superstition which was entwined with all their dearest principles; and even the wisest men were startled at the idea of any national change of religion,

* Burnet, *Hist. of Ref.* p. 24 *et seq.*

† Halle, p. 1880; Strype's *Ecclesiastical Memorials*, vol. i. p. 129.

‡ Burnet was of opinion that this book was not composed by Henry,

though he had the meanness to take the credit of it (see part iii. book 3, vol. v. p. 295). Pope Leo wrote to that monarch, 'that it appeared the Holy Ghost assisted him in writing it' (p. 30, vol. v.)

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on account of its political consequences, of which the previous history of mankind could not afford great assistance in predicting the issue, though it warned them against the attempt. Of the favourers of the Reformation at the outset, the larger portion were rather actuated by an aversion to the clerical ascendancy and exactions than by the fervour that soon took possession of them; and they followed the opinion of lawyers, who maintained that the king, in asserting his supremacy over the church, merely resumed the ancient right of the Crown.

The failure of Wickliffe's attempt at reformation had thrown such an odium upon his doctrine that, on the second dawn of a more liberal era, people were deterred from recurring to his tenets, and therefore regarded the Saxon reformer, who followed his great precursor in England at a vast distance, as the original apostle of true religion, to whom they must look for instruction. Luther began with attacking the sale of indulgences, and at that time entertained no idea of impugning the Papal supremacy. It was only after much ill treatment that he conceived the boldness to inquire into the nature and origin of a power which exacted such unlimited dominion over the human mind; and even then he proposed to submit all his disputes to the decision of a general council.* When that was denied him, he indeed renounced the established church; but he never abandoned the fundamental points of doctrine in which he had been bred. The corporeal presence of Christ in the sacrament, the efficacy of images, &c., were amongst his favourite tenets; and the church which he founded retained the same principles. That portion of the English people who considered Luther the genuine author of the Reformation, and still clung to the old doctrine, were alarmed at the idea

* Mosheim gives the best account of Luther; but he wishes it to appear that the reformer had a nice distinction about a council, which should be of the universal, and not of the

Popish church. But the Popish was then the only Christian church except the Greek, which Luther surely never meant to appeal to.

of any spirit of inquiry going abroad, and disposed to support the government in repressing it. Indeed, such a result was the natural consequence of the intolerance of each sect in that age, however limited in number; for each, as it arose, conceived itself entitled to obtrude its creed, by every means, upon the rest of the community; and they who were in power could not be greatly condemned for acting under the dominion of principles which they were daily taught by all parties. Those who regarded the first movements as merely introductory to a purer system, would also be inclined, though for a different reason, to adhere to the Crown, lest Henry, as the head of the Reformation, should by ill-timed contradiction be provoked into a relapse, when, from the larger number of the Catholics, he might, by joining with them, yet crush the attempt to depart from the corruptions of former times. Even the prudent part of the Catholics themselves, whose zeal would make them conceive the present heresy to be temporary, would be cautious in offending the king, lest they should irritate him into throwing himself yet more upon the adverse party, when, in all likelihood, greater changes would be contemplated, and a return to the ancient faith, which was still held up to reverence by the retention of so much of its doctrine and many of its ceremonies, might be rendered almost impracticable.

But many circumstances connected with the former attempt at reformation, and the late effects of religious innovation on the Continent, had contributed now to inspire fear and amazement. The opinions of Wickliffe had penetrated into Bohemia about the close of the fourteenth century, and under the auspices of John Huss, who was burned as a heretic in 1415,* had diffused themselves widely. The Hussites—for the new sect was known

* See Mosheim, vol. iii. p. 406 *et seq.* Lond. edit. 1811, for an account of this reformer. He owed his death, in a great measure, to his having

embraced the side of the Realists in their absurd disputes with the Nominalists, which were carried to the most extravagant height.

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by that name—divided themselves into two parties,—the one called Calixtines, from their insisting upon the cup or chalice in the celebration of the Eucharist; the other, Taborites, from the name of a well-known mount in sacred writ.* The first are represented as having been gentle in their manners, and modest in their demands; the other, as the wildest enthusiasts, whose conduct threatened the dismemberment of society. The Taborites expected that Christ would descend in person, with fire and sword, to extirpate heresy and purify the church. ‘It is,’ says Mosheim, ‘this enthusiastic class of the Hussites alone that we are to look upon as accountable for all those abominable acts of violence, rapine, desolation, and murder, which are too indiscriminately laid to the charge of the Hussites in general, and to their two leaders, Ziska and Procopius, in particular. It must indeed be acknowledged, that a great part of the Hussites had imbibed the most barbarous sentiments with respect to the obligation of executing vengeance on their enemies, against whom they breathed nothing but bloodshed and fury, without any mixture of humanity or compassion.† The Emperor Sigismund, having succeeded to the throne of Bohemia, attempted to suppress them, and in the year 1420 they flew to arms, when the acts of barbarity that were committed on both sides ‘were shocking and terrible beyond expression; for, notwithstanding the irreconcilable opposition that existed between the religious sentiments of the

* Mosheim, vol. iii. pp. 448–9.

† Mosh. vol. iii. p. 450. The author has added a note to the text, in which he says—‘From the following opinions and maxims of the Taborites, which may be seen in the *Diarium Hussiticum* of Byzinius, we may form a just idea of their detestable barbarity:—“Omnes legis Christi adversarii debent puniri septem plagis novissimis, ad quam executionem fideles sunt provocandi. In isto tempore ultionis, Christus in sua humilitate et miseratione non est

imitandus ad ipsos peccatores, sed in zelo et furore et justa retributione. In hoc tempore ultionis, quilibet fidelis, etiam presbyter, quantumcunque spiritualis, est maledictus, qui gladium suum corporalem prohibet a sanguine adversariorum legis Christi, sed debet manus suas lavare in eorum sanguine et sanctificare.” From men who adopted such horrid and detestable maxims, what could be expected but the most abominable acts of injustice and cruelty?’

contending parties, they both agreed in this one horrible point, that it was innocent and lawful to persecute and stirpate with fire and sword the enemies of the true religion; and such they appeared to be in each other's eyes.* Not to mention other insurrections in later times, we shall only advert to the wild and horrible commotions in various parts of Germany, where the peasants, rendered desperate by oppression and cruelty, rose in a body, declaring themselves unable longer to submit to their condition. But, as might have been expected of men whom oppression had kept in ignorance, and cruelty made ferocious, they were incapable of adopting measures calculated to secure the privileges of humanity in future, many of them vainly imagining that their safety depended on extinguishing the rights of property with all established institutions—a result to which they were led by deducing all their evils from these sources. To complete their misguided fury, religion mingled with their other passions, and was carried to the highest pitch of fanaticism—a circumstance which cast obloquy on the cause of reform, and alarmed princes and the higher ranks throughout Europe.† Of this the Catholics did not fail to make a proper use, their cry, according to Bishop Jewel, who flourished in the beginning of Elizabeth's reign, being, 'These men,' meaning the reformers, 'be rebels; they would have no magistrates; they would have all things in common. Behold what they have done in Helvetia; behold what they have done in Germany. Look out our chronicles; you shall find all the uproars and seditions which have been these forty years stirred up by some of them.'‡ Under the influence of such panics,

* Mosheim, vol. iii. p. 447. A great number of other sects arose, or still maintained their principles about this time, in different quarters of Europe (i. 461 *et seq.*).

† Mosh. vol. iv. p. 64 *et seq.*; 23 *et seq.*

‡ Jewel's works, ed. 1611, p. 178.

Wolsey, in his last moments, began an exhortation to take heed of the Lutherans, by the example of those of Bohemia, lest they should likewise subvert the secular power (Herbert, p. 148). Halle says that 100,000 rose up in Germany (f. 142).

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and observing that new sects daily sprung up from the lower classes, while each teemed with mortal intolerance towards all others, as if it derived exclusive authority from heaven; the higher ranks, who were impatient at the papal yoke, were much disposed to trust the Reformation to the government, particularly to the king, as its head as well as leader of the Reformation, and to strengthen the executive, that it might direct the current, lest the spirit of fanaticism, emerging in a variety of shapes, should, with the fury of a hurricane, sweep before it all the established orders of society.*

The aristocracy seem, at the outset, to have meditated the plunder of the church, and delusive hopes as to exemptions from tithes encouraged many in all classes to proceed with the great work of reformation. The aristocracy were not disappointed; for the religious houses being dissolved, the larger portion of the immense territory belonging to them was either given away by the king to favourites, or sold at low rates to the nobility and gentry of the several counties. This at once bound men of the greatest influence to the interest of the Crown, and obliged them to support the measures proposed to them from the Throne, lest, before their rights were confirmed by time, the sovereign should be provoked to throw himself back into the arms of the Catholics, and, with their assistance, recover for the church the property of which she had been plundered.

Opposition was to have been expected from the clergy; and from their numbers in the Upper House of parliament, it might have retarded the grand change. But an advantage was taken of them, which reduced them to the necessity of acquiescing in the first movements, and by such means, not only brought them more under the influence of the Crown in all subsequent measures, but taught them the folly of contending with the stream. Wolsey,

* The Papists alleged that there were no fewer than thirty-four sects in Germany. Jewel's works, p. 406.

e had violated the statutes against purchasing bulls
 Rome, by those for his legantine power, which he
 exercised for years, had incurred a premunire, for
 h he was prosecuted; and though he might have
 ed, with truth, that his royal master had instigated
 to that very proceeding which he now so severely
 ed in the form of law, he more prudently pleaded
 rance of the statute, and submitted to the royal mercy.
 was, by sentence of the court, declared to be out of
 king's protection, and to have forfeited his goods and
 tels, and even his personal liberty. But Henry re-
 ed some kindness for his former favourite, and allowed
 to retire with the means of supporting a splendid
 olishment.* The blow against the cardinal was fol-
 ed up by another against the whole clergy, as acces-
 to his crime, by submitting to his usurped power.
 ing been regularly convicted of this offence, they
 nitted to the king's mercy; and Henry availed him-
 of his situation to exact rigorous terms for sealing
 : pardon: 1. That the two provinces of Canterbury
 York should pay into the exchequer 118,840*l.*—an
 ense sum in those days; and that the whole clergy
 ld acknowledge him to be sole and supreme head of
 church under Christ. The first condition was instantly
 plied with; but the second was demurred to, the
 gy contending that a layman could not be properly
 ed the head of a spiritual establishment, till the king

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Herbert, p. 124 *et seq.* See in
 t an account of the Cardinal's
 lid furniture. Burnet, vol. i.
 3 *et seq.* Lord Burgley, in a
 paper to Queen Elizabeth about
 rites, says of Wolsey, that he
 family equal to that of a great
 a. There were in it one earl,
 ine barons, and about a thou-
 knights; and (Burnet, vol. v.
) this is confirmed by his de-
 , as preserved by Godwin, *Rev.*
Annal. lib. i. an. 1529. In
 rming divine service he had

even dukes and earls to give him the
 water and the towel (Burnet, *Hist.*
of Ref. vol. i. p. 35). The practice of
 great men having the sons of good,
 nay, of the highest families as ser-
 vants, was quite common. Mr. Galt,
 in his *Life of Wolsey*, p. 100, has
 fully shown the error of Mr. Hume
 on this subject. For an account of
 Wolsey's fall, &c., see Strype's *Eccle-*
siastical Memorials, vol. i. cc. 15 and
 16. What a fall to the cardinal!
 his household reduced so low as to
 about 160! (Herbert, p. 147.)

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told them that he claimed the title only in so far as it was agreeable to the word of God ; and, with that qualification, they assented. In a year or two afterwards, however, he obtained a confirmation of his title, both in parliament and convocation, without the qualification.* The spiritual peers outnumbered the temporal ; but the bishops, according to Burnet, were always much at the king's devotion, and, though there were twenty-six parliamentary abbots and two priors, they could not alone arrest the current, while all their hopes now depended on pleasing the king. Had, however, the spiritual peers remained united in firm opposition, the effect could only have been temporary ; as, besides being probably molested with penal laws for extortions, &c., which they justified by prescription, the creation of a few temporal peers would have given a preponderance against them, when their ill-judged and unavailing attempts to contend with the other branches of the legislature would have been productive of a greater fall than they had any cause to anticipate.

Wolsey, that he might render himself memorable as a patron of learning and founder of bishoprics, as well as enlarge the royal power over all religious establishments, used his great influence at one time with the pope to obtain a bull for suppressing a few monasteries, on the condition of still converting the property to pious uses ; and, as a pretext was necessary, he visited those endowments by virtue of his legantine power, and attached to them charges of immorality, which opened the road afterwards to their total suppression.† Some petty houses

* Herbert, p. 151 *et seq.* ; Burnet, vol. i. p. 204 *et seq.* ; Neal's *Hist. of the Puritans*, vol. i. c. 1.

† Burnet, p. 34 ; Herbert, p. 102. This author says, that the cardinal 'knew this would please the king, who began to think that religious persons might serve God as well by fighting for the kingdom as praying for it ; so he assured himself the au-

thority thereof would be derived on him chiefly, and the pope, in the meantime, obnoxious, while he could not but fear how far these innovations might extend' (Strype's *Ecclesiastical Memorials*, vol. i. b. i. c. 14). Godwin ascribes the cardinal's fall to his sacrilege in dissolving these petty houses, forty in number—sacrilege which was alleged to have

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and strangled in jail, and, a jury having sat on the body, acquitted it of suicide, and charged the servants of the clergy with murder; but the verdict did not restrain the clergy from showing their pitiful malice upon the corpse. They sat in judgment on it; and having convicted it of heresy, delivered it over to the secular power to be burnt—a ceremony which was performed with all solemnity in Smithfield; they at the same time abused the jury as false perjured caitiffs, and interposed with the king to prevent an inquisition into the murder.* These proceedings, while they evince the extravagant pretensions and atrocity of the clergy, also, in the train of events, proved their folly. The Reformation by Luther soon began to convulse Europe, and circumstances of so crying a nature roused the attention of Englishmen; while the nobility and gentry, who complained grievously of the extortions of ecclesiastics,† were ready to embrace an opportunity to compensate their losses by a general plunder of the establishment.

Henry had early, by his polemical writings against Luther, distinguished himself as a champion of the Church, and been complimented by his Holiness with a *se,* &c., and with what he valued more dearly, the title of Defender of the Faith;‡ but enraged afterwards at the shuffling policy of the Pope in regard to the lawfulness of his marriage with his brother's widow, he cast off the Romish yoke. The measure accorded with the views of a great part of the kingdom; but of these a large portion were as yet incapable of renouncing the nets of that superstition which was entwined with all their dearest principles; and even the wisest men were startled at the idea of any national change of religion,

* Burnet, *Hist. of Ref.* p. 24 et

† Halle, p. 1880; Strype's *Ecclesiastical Memorials*, vol. i. p. 129.

‡ Burnet was of opinion that this book was not composed by Henry,

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on, proposals were made to parliament for devolving their property on the Crown; and the reasons assigned were, that every king ought to have three things: 1, the means of properly supporting the state of royalty, and of defending his subjects; 2, of aiding his confederates, who otherwise would not assist him; and, lastly, of rewarding his servants: that, therefore, if the monastic property were granted to the sovereign, he could never have occasion again to apply to his subjects for pecuniary aid, but would be enabled to support 40,000 well-trained soldiers, for the public defence, beyond the present military establishment, and to create temporal peers in the place of abbots and priors.* This plausible scheme, however, appears to have deceived nobody. The abbots and priors, imitating the conduct of their predecessors in the *Parliamentum Indocorum*, accused the laity of acting under the selfish and impious principle of appropriating the church's patrimony to themselves,† while

* Howe's preface to Stow's *An.*; Strype's *Mem.* vol. i. p. 345; 4 *Inst.* p. 44.

† The following is the greater part of an admirable speech by Fisher, Bishop of Rochester, in Nov. 1520, and fully establishes the statement in the text:—

‘MY HONOURED LORDS,

‘This is the place where your glorious and noble progenitors have fraternised the kingdom from oppression. Here is the sanctuary where, in all ages but this of ours, our mother church found still a sound protection. I should be infinitely sorrowful, that from you, that are so lovely branches of antiquity, and Catholic honour, the Catholic faith should be so deeply wounded. For God and your own goodness' sake, leave not to posterity so great a blemish, that you were the first, and only those that gave it up to ruin. Where there is cause, you justly punish, and with justice; but beware of infringing so long-continued privileges, or denying the mem-

bers of the church the very parts of their advantage that is enjoyed by every private subject. The Commons shoot their arrows at our livings, which are the motives that conceit us guilty, &c. My lords, consider your actions; be advised. This cause seems ours; it will be yours, if that the mother church do feel injustice. Your turns are next to feel the like oppressions. When faith begins to fail, then all must perish. Heretic fancies taint the common people, whom novelties betray even to perdition: let neighbour nations tell you your own story. Huss, Luther, and such like frantic teachers, cry out against the church in all their sermons; they do pretend nothing but reformation, when they themselves are deepest dyed in mischief. What follows then—to wit, perdition—we may expect in justice. The church's wealth occasioned this first moving. If that were poor, our vices would be virtues, and none would be forward to accuse us. What can we look for then but desolation, where private

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they pretended the public good ; and subsequent events verified the charge. Parliament began with granting the lesser monasteries, whose revenues were individually rated as not exceeding 200*l.* per annum, and might possibly have paused at the proposal of proceeding farther had not their hopes been gratified. Of the smaller houses, there were three hundred and seventy-six suppressed under this statute ; and though their revenues were rated so low as at or under 200*l.* each, many of them were in reality to the amount of thousands. The suppression, by striking at the stability of property, and abridging the means of providing for daughters, &c., excited great discontent and open outcry amongst the higher classes, as the loss of the wonted charity and other consequences of the proceeding did amongst the lower—and in some places the people broke out into rebellion ; but the rebels were reduced, and the king soon conciliated the majority of the aristocracy by liberal gifts, and by following the advice of his confidential minister, Cromwell, to sell the lands at an under value to the nobility and gentry of the several counties, that so many might be interested in supporting the transference of property as should effectually oppose the re-establishment of those institutions.* The fall of the lesser

ends are made a public grievance ? Our lesser houses are desired from us, not that their value doth deserve the motion, but that the greater may succeed their fortune, which soon will follow, if the gap be opened' (Scott's edit. of *Som. Tracts*, vol. i. p. 40 ; see Halle, f. 188). The Commons resented the speech deeply. Now, it is remarkable that the visitation of the monasteries to ascertain the state of their morals, upon which the lesser houses were suppressed, took place six years posterior to this speech—that is, in 1635 (see Burnet, p. 347). Who then can believe the report of the visitors ?

* Burnet, vol. i. p. 406. Some writers have imagined that Henry

might have rendered himself absolute, by retaining the church property ; but it is quite evident, from all the facts, that the thing was utterly impracticable. The discontent was exceedingly great at first, manifested itself in insurrections, and would have led to a revolution had not this method been adopted (see Burnet, b. iii.) The nobility and gentry used to provide for their younger children in the religious houses, and complained much of the injury they sustained by the suppression, till they got the lands (p. 405). It is curious to observe the language of Burnet, as applied to the different classes. The lower ranks forsooth 'followed Christ for

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houses, and such a disposal of their property, prepared the way for the subversion of the greater. But, as parliament might not have been inclined all at once to grant the latter to the king, he accomplished his object by a most politic proceeding. The vacancies which had occurred, by the deaths of abbots and priors, since the renouncement of the papal yoke, were filled up by Henry with individuals nominated for the express purpose of resigning the foundations into his hands ; * while new visitors were appointed to detect the secret crimes and impostures of the remaining endowments, and threaten or seduce the heads of them into resignations.† The visitors charged some abbots and priors with abetting the late rebellion ; others, with great disorders in their lives ; many, with having dilapidated the revenues and wealth entrusted to them, either by carrying off the plate, &c., or granting leases to their kindred at quit rents, when they perceived the ruin of the endowments to be inevitable ; others, again, with having denied the king's supremacy. And as all these, while threatened with prosecutions on one side, were flattered with promises and offered tolerable terms on the other, they, for the most part, compromised matters by surrenders. Many, in the hope of advancement to bishoprics, or to be made suffragan bishops, as the inferior abbots generally were, gladly recommended themselves by ready and cheerful resignations ; and to some the honour has been ascribed of acting from new-sprung zeal for the Reformation. Some obstinately stood out and denied the king's supremacy, either joining a party in arms or abetting rebellion, and were attainted of treason ; when,

the loaves, and were most concerned for the loss of a good dinner on a holiday. Their discontent lay in their stomach' (p. 406) ; and yet he allows, that all the higher classes eagerly shared in the spoil, making their religion subservient to their worldly interest. This prelate thought

the religious houses should have been reformed to the new doctrine, and not dissolved (see his Pref.). Latimer, too, wished the preservation of two or three in every shire (Burnet, p. 432 ; Herb. pp. 186, 192, 217).

* Burnet, vol. i. p. 430.

† Burnet, vol. i. p. 430 *et seq.*

contrary to all law, the endowments over which they presided were declared to be forfeited to the Crown.* CHAP.
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The surrenders were of themselves invalid, because the abbots and priors, being merely trustees, had no power to alienate the property; but, as the lands and revenues were for the most part disposed of like those of the lesser houses, there was no difficulty in persuading parliament to supply the defect of title, whether by resignation or forfeiture; and all leases granted by the abbots, &c., within a year of the surrender, were reduced.

The personal property that devolved on the Crown was immense, and the rated revenue of all the houses suppressed was, according to one account, 131,607*l.* 6*s.* 4*d.*; to another, 161,100*l.*; but the real value is said to have been at least ten times more; and though six new bishoprics were erected out of real property, and part was retained by the Crown, infinitely the greatest portion was either sold at an undervalue, or given away to the nobility and gentry.† The influence conferred by it was proportionally great, and the precariousness of their tenure, till their rights were confirmed by time, obliging the purchasers and grantees to throw their influence into the scale of the Crown, increased the authority of the monarch to a vast extent. The state of factions, as we have observed, enabled Henry to occupy the proud place of arbiter in determining their fate. The ascendancy at once belonged to the side he embraced, and the new proprietors were fully aware—indeed, the rebellions which followed the suppression of the monasteries afforded them a salutary lesson, by showing the strength that could be arrayed to restore the Church patrimony‡

* Burnet, p. 430 *et seq.* See vol. v. in proof of the violent means resorted to by the visitors (p. 226 *et seq.*). Herbert says that Cromwell, 'betwixt threats, gifts, persuasions, promises, and whatsoever might make man obnoxious, obtained of the abbots, priors, abbesses, &c., that their

houses might be given up' (p. 217). See also p. 218.

† Burnet, vol. i. p. 488; Herb. p. 218; Bur. p. 487. See Strype's *Ec. Mem.* vol. i. p. 204 *et seq.*, in proof of the keenness with which the houses were sued for.

‡ See Herbert, Burnet, &c.

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—that if, by an ill-timed opposition, they irritated the monarch to renew his alliance with the Catholics, that body, thus united under a regular head, might succeed in recovering the patrimony of the church out of profane hands. The fluctuating principles of Henry, as well as those to which he always adhered, were calculated equally to alarm the one faction and encourage the other; for, ‘in the whole progress of the changes,’ says Burnet, ‘his design seems to have been to terrify the court of Rome, and cudgel the pope into a compliance with what he desired;’* and Clarendon justly observed, that he was ‘not less a Catholic to the hour of his death than when he writ against Luther.’† This, then, was one of the grand sources of that influence in parliament, so much remarked, which Henry possessed in ecclesiastical affairs.

At an after period, the pure and evangelical times of the first Reformers, with their views, were appealed to as the criterion of the Protestant creed; and the zeal of Laud and his coadjutors is alleged to have been only directed towards restoring the church to that model of imputed perfection.‡ It will therefore be no less conducive to a correct idea of the schemes entertained during the reign of Charles I. than to that of the government in the time of Henry VIII., to give a summary of the chief acts of the legislature, which conferred power upon the latter monarch in ecclesiastical affairs, and an account of the manner in which he carried them into effect.

The same parliament which confirmed the surrender of the greater monasteries, strengthened the Crown by an Act in regard to proclamations. As Henry had proceeded to innovate in religious matters, without the intervention of the legislature, great murmurs had arisen, and his injunctions were, with other proceedings,

* *Hist. of Ref.*

† Clarendon's *Hist. of the Church*, *Life of Laud*.

‡ Heylin's *Introduction to*, and

p. 321.

generally considered as an invasion of public rights.* CHAP.
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The Act, therefore, sets forth in the preamble, ‘the contempt and disobedience of the king’s proclamations, by some who did not consider what a king by his royal power might do, which, if it continued, would tend to the disobedience of the laws of God, and the dishonour of the king’s majesty (who may full ill bear it), considering also that many occasions might require speedy remedies, and that delaying these till a parliament met, might occasion great prejudices to the realm, and that the king by his royal power, given of God, might do many things in such cases; therefore it is enacted that the king for the time being, with advice of his counsel, might set forth proclamations, with pains and penalties in them, which were to be obeyed as if they were made by an Act of Parliament. *But this was not to be so extended that any of the king’s subjects should suffer in their estates, liberties, or persons, by virtue of it; nor that by it any of the king’s proclamations, laws, or customs were to be broken and subverted.*’ Then follow clauses about publishing proclamations and prosecuting those who contemned or disobeyed them.

Another Act, commonly known by the name of the Bloody Statute, followed immediately, though with much opposition;† and, it is curious to learn, that, as it countenanced the Romish faith, so it reconciled many of that party to the suppression of monasteries.‡ It is entitled ‘An Act for Abolishing Diversity of Opinions in certain Articles concerning Christian Religion;’ and sets out in the preamble with stating that ‘the king, considering the blessed effects of union, and the mischiefs of discord, since there were many different opinions both among the clergy and laity, had called this parliament, and a synod at the same time, for removing these differences, when six articles were proposed and long debated by the

* *Hist. of Ref.* vol. i. p. 477.

† Strype’s *Ecclesiastical Memorials*, vol. i. b. i. c. 47; Burnet, vol. i. p. 465 et seq.

‡ *Id.* p. 471.

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clergy, and the king himself had come in person to parliament and council, and opened many things of high learning and great knowledge about them ; and the six articles were: 1st. That, in the sacrament of the altar after consecration, there remains no substance of bread and wine, but under these forms the natural body and blood of Christ are present. 2nd. That communion in both kinds is not necessary to salvation to all persons by the law of God, but that both the flesh and blood of Christ are together in each of the kinds. 3rd. That priests may not marry by the law of God. 4th. That vows of chastity ought to be observed by the law of God. 5th. That private masses ought to be observed, which as it is agreeable to God's laws, so men receive great benefits by them. 6th. That auricular confession is expedient and necessary, and ought to be retained in the church.' It was enacted also, that those who spoke, preached, or wrote against the first article, should be adjudged heretics, and be burnt without any abjuration, as well as forfeit their real and personal estates to the king. That those who preached against or obstinately disputed the other articles, should suffer death as felons, without benefit of clergy, and that those who either in word or writing declared against them, should be imprisoned during the king's pleasure, and forfeit their goods and chattels for the first offence, and for the second suffer death. All marriages of the clergy were annulled, and a severe clause against their incontinence was inserted. For carrying this law into effect, the king was empowered to issue commissions to the archbishops and bishops, and their commissaries, to hold sessions quarterly, but to proceed upon presentments, and by a jury of twelve men, according to law.

The statute 32 Henry VIII. c. 20, sets out with stating that the king, as supreme head of the church, was taking much pains for a union amongst all his subjects in matters of religion ; and, for preventing the farther progress of heresy, had appointed many of his bishops, and the most learned divines, to declare the principal

articles of the Christian belief, with the ceremonies and mode of service to be observed ; that, lest a matter of such consequence, instead of being done with requisite care, should be done rashly or hastened through in this session of parliament, it was enacted, that ‘ whatsoever was determined by the archbishops, bishops, and the other divines now commissioned for that office, or by any others appointed by the king, or by the whole clergy of England, and published by the king’s authority, concerning the Christian faith, or the ceremonies of the church, should be believed and obeyed by all the king’s subjects, as well as if the particulars so set forth had been enumerated in this Act, any custom or law to the contrary notwithstanding.’ But a proviso was added, which destroyed the clause, that ‘ nothing should be done or determined by the authority of this Act which was contrary to the laws and statutes of the kingdom.’

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Thus authorised by statute, the king and his bishops prepared a Book of Injunctions, which contained the substantials of the Romish creed. The seven sacraments, though somewhat modified ; the real presence, the worship of images, invocation of saints, with similar matter, formed the basis of the book ; and so early was the public attention called to the subject of free-will and necessity, the effect of baptism, and the like, which afterwards proved such a fruitful source of schism. But the grand subject of dispute in this reign regarded the corporeal presence of Christ in the eucharist, and many suffered at the stake for denying it. The missal was somewhat altered, but the greater part of the ceremonies of the old religion were retained.*

The statute 35 Henry VIII. c. 1, allows the use of the Bible in English to all of a certain rank, provided they read it quietly ; but prohibits any from expounding it in an open assembly, except such as are licensed by the king or his ordinary—and likewise provides that artifi-

* Burnet, vol. i. p. 519 *et seq.* ; *Ec. Memorials*, vol. i. See Neal’s *Hist. of the Puritans*, vol. i. c. 1.

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cers, apprentices, journeymen, as well as husbandmen, &c., under the degree of a yeoman, shall not read the Scriptures in their native tongue. It permits all classes to read and teach in their houses the book published in the year 1540, with the psalter, primer, paternoster, the ave, and the creed, in English ; but provides that all spiritual persons who preached or taught contrary to the doctrine set forth in that book, were to be admitted, for the first conviction, to renounce their errors; for the second, to abjure and carry a faggot ; but if they refused, or if they fell into a third offence, they were to be burnt. The laity, however, for the third offence, were only to forfeit their goods and chattels, and be liable to perpetual imprisonment. The Statute of Six Articles was also declared to be in force, but it was thought to be moderated by the authority which was given to the king to alter it or any of its provisions at pleasure.

We have already had occasion to speak of the supremacy—and it may not be improper to illustrate its nature by an Act passed towards the conclusion of this reign, which declares that ‘ archbishops, bishops, and deacons, and other ecclesiastical persons, have no manner of jurisdiction ecclesiastical, but by, under, and from his royal Majesty, and that his Majesty is the only supreme head of the Church of England and Ireland, to whom, by Scripture, all authority and power is given to hear and determine all manner of causes ecclesiastical, and to correct all manner of heresies, errors, vices, and sins whatsoever, and to all such persons as his Majesty shall appoint thereunto.’

This summary of the principal legislative enactments regarding religion, evinces that, during the reign of Henry VIII., the Reformation, in respect to doctrine, made small advances, and that Parliament devolved powers of an extraordinary nature upon the king. The causes of this have been already explained ; yet the reader may be again reminded of the strange posture of affairs. It is easy to censure, and dwell upon the impolicy of, intolerance ; but, in the season of alarm and confusion, it re-

quires a rare perspicacity of judgment, and expansion of intellect, to look beyond the terrific gloom of the moment, and to remain calm and unruffled amid the jarring elements. Such was not to be expected in that age, when it is considered that, after the Reformation had been tried by the test of experience, men of the greatest sagacity held that different religions in a state were incompatible with public safety. The intolerance of Henry and his parliaments have been condemned as the abstract of tyranny—not unfrequently, too, by the devotees of sects; but it should ever be remembered that, of all the sects obnoxious to persecution, there was not one which did not thirst for an opportunity to exercise similar dominion over all who refused implicitly to adopt its doctrine. Nor had these religionists any difficulty in reconciling such an atrocious principle with their grievous complaints of the bloody intolerance to which they were themselves exposed; for they maintained, that as they drew their creed from the genuine source, it could not be a matter of doubt; and that, as others wandered in darkness, merely from the perverseness of their own hearts—from unpardonable prejudices, and wilful blindness—it was no less an act of piety, than of mercy to the rest of mankind, to punish or cut off, as workers of iniquity, those who obstinately shut their eyes against the light. The particular direction which intolerance took in the time of Henry VIII. was owing to the various sources of influence possessed by the Crown; but the same spirit, in a different form, might, and in all probability would, have disgraced society under the purest republic. In a free government, however, intolerance cannot exist long: though, in a season of revolution, false notions and unfounded fears may inflame the great body of the people with a rage to persecute their brethren, yet it will commonly be found that it is selfishness, disguised under the cloak of religious feeling, which continues to blacken the heart with unhallowed zeal to drown opposition in blood. When men in power resent the injury done to their pride by sects who question their exclusive

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right of place—when they dread being dispossessed by those sects, or apprehend a loss of public respect—then it is that they are a prey to furious, persecuting passions, encouraged by the common voice of the party, and confirmed by the hostility of the opposing sects, hostility which their own breasts reflect, and all sanctified, even in their own eyes, by the bigotry which they indulge as a self-excuse. But as the clergy are, under a good government, kept in their proper sphere, and consequently have not the same motives to work upon the passions of the multitude, while no particular sect so exclusively occupies the road of preferment and honour as to have a direct interest in suppressing others, people soon begin to regard each other's opinions with the genuine spirit of Christianity and philosophy.

Though the Reformation, in regard to religion, had advanced little, much had, in reality, been done. The power of parliament to regulate the church had been fully recognised, and the circumstances which retarded change could not operate long. Great powers had indeed been transferred to the Throne; but, being derived from the legislature, they could, upon every just principle, be resumed by the same authority; and in one respect they have been erroneously exaggerated. If the constitutional language were to be literally interpreted, the sovereign is absolute proprietor of every man and thing within the realm—the parliament is his, the territory his, the people are his. But it is superfluous to add, that this is not the principle of the constitution, which gives the right of reigning, subject to the condition of his governing according to law, and under direction of his great council, the parliament; and that his will can only be signified, and acted upon, through the legal channels. Had this been duly weighed, certain writers would not have discovered such a fund of obloquy in the statutes which gave the king supremacy over the church. The great object of those statutes was to rescue the kingdom from a foreign yoke, and to prevent the English clergy from establishing independent authority in their

own body ; in a word, to bring ecclesiastical causes, like the civil, under the control of the sovereign, in his capacity of chief magistrate and fountain of justice. But the prerogative being bounded by the provisions of the legislature—provisions too ample, indeed, in that reign—the supremacy, abstractly considered, implies no unreasonable power in the Crown, and does not in reality involve any question about the respective merits of ecclesiastical establishments, except in so far as the clergy maintain that their order is a divine institution which ought to be independent of civil government. Wherever there is a religion of the state, it ought, in the nature of things, to be Erastian, or subordinate to the civil constitution. If it be otherwise, there must necessarily either be such a clashing of interests between the church and state as will prove destructive of public peace, and, in the common case, end in the ruin of the religious establishment, or the monarch will form a junction with the priesthood prejudicial to the rest of the community, since each will, from their mutual interest, assist the other in usurpations upon public rights. The last had occurred under the Romish yoke, and still continued in Catholic monarchies ; the former was strikingly exemplified in Scotland by the Presbyterian system, while it flourished in primitive vigour. It is true that Presbyterianism has since proved itself in that country perfectly compatible with monarchy ; but it should always be remembered, that it only acquired that character after its powers were so abridged that it had virtually become Erastian.* It is the patronage of the Crown, and not the supremacy, which gives it influence : Henry's great authority was derived from the other statutes as well as from his patronage, and not from those which conferred upon him the supremacy.

On the death of Henry VIII. the succession opened to his son, Edward VI., then a boy only nine years and four

* Those who have attentively perused Baillie's *Letters* will be satisfied that the gentlest disposition in an ecclesiastic—and I quote Baillie,

because he was naturally remarkably mild—does not secure him against a desire to establish a church government inconsistent with the civil.

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months old. By Henry's will, which he had been empowered by statute to make, sixteen persons had been nominated his executors and regents of the kingdom till his son should complete his eighteenth year; and of these the young king's uncle, the Earl of Hartford, afterwards created Duke of Somerset, was chosen protector of the realm and governor of Edward's person. To these, twelve were added as a privy council, to assist them in public affairs. The regents differed upon the important subject of religion, some being for the old and the rest for the new; but the majority, with the protector at their head, having declared for the Reformation, carried measures for promoting it, in spite of opposition from the minority, joined by the greater part of the bishops and inferior clergy, who still adhered to the principles of the Romish creed. Persecution upon the Bloody Statute was stopped; the prison doors were thrown open to those who suffered under it; and exiles, of whom several were afterwards preferred to great benefices, returned in safety and honour to their native country. Images, soul-masses, &c., were treated as superstitions; a book of homilies, more freely composed, was published by authority as a substitute for preaching ministers, of whom there was a great deficiency; a royal visitation was appointed, and new injunctions, likewise of a more liberal kind, were, along with the homilies, delivered by the visitors to the clergy throughout the kingdom. The first measures were adopted without the intervention of the legislature, in virtue of the powers conferred upon the Crown by the statutes about proclamations, and by that which authorised the recall of the Statute of Six Articles. But parliament soon met, and formally repealed not only all laws which made anything treason that was not specified in the 25th of Edward III., but two statutes against Lollardies; the Bloody Statute, with the acts which followed in explanation of it; all laws in the late reign declaring anything to be felony that had not been so before; together with the statutes which made royal proclamations in certain respects of equal authority

with acts of the legislature. It was particularly enacted, too, that all processes in the spiritual courts should run in the king's name.* Some deaneries and chauntries had been given to Henry, and the remaining chauntry lands, with legacies for obits and the like, were now granted to the Crown, under the pretext of maintaining grammar schools out of the revenue; but the hungry courtiers, of whom several were gratified with new titles or peerages, engrossed all, either in the form of gifts, or of purchases at low rates.†

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It would be inconsistent with our plan to specify particularly the alterations in the public creed and worship during this short reign; suffice it to say, that the altar was turned into a communion table, and commemoration of the Lord's Supper—in which, however, the real presence, subject to some incomprehensible modification, was asserted by twenty-six leading men—substituted for the mass; that images were pulled down, the invocation of saints prohibited, and the mass books called in; that the marriage of the clergy was allowed, and auricular confession left indifferent; that articles of faith similar to the Thirty-nine Articles were agreed upon; and that a liturgy, little different from the one now in use, having been framed, was sanctioned by the legislature. The liturgy was first published merely by royal authority, and a great murmur was excited by so bold an invasion of public privileges; but, though the ministers of the Crown affected to defend it on the principle of its falling within the scope of the king's supremacy, they prudently lost little time in summoning a parliament to give it the authority of law. Farther alterations were meditated, and, in particular, it was at one time in agitation to discontinue the vestments of the clergy, afterwards a great cause of schism; but the premature death of Edward gave a very different direction to public affairs. Of this young prince, to whom other

* Burnet, part ii. b. i.; Strype's *Ecclesiastical Memorials*, vol. ii. b. i.; Neal's *History of the Puritans*, vol. i. c. ii.

† Strype's *Ecclesiastical Memorials*, vol. ii. pp. 63, 362; Burnet, vol. iii. pp. 84, 125; Neal, vol. i. p. 51.

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The conduct of the aristocracy fully evinced that the part which they had hitherto taken in the Reformation had proceeded from worldly motives. Not content with the property they had acquired by the dissolution of the monasteries (and from the great extent of tithes appropriated to those houses, which passed along with other grants, there remained little in many places for the clergy), they obtained the chauntry lands, &c., and enjoyed the very benefices of the church. The Lord Cromwell, who had been so active in bringing the enormities of the monasteries to light, had been Dean of Wells; the Earl of Hartford was promised six good prebends; 'and,' says Burnet, 'many other secular men had these ecclesiastical benefices without cure conferred on them.' † Some motions to relieve the extreme misery and poverty to which the clergy were reduced were made in parliament; but, however ready that assembly might be to advance the views of the court in regard to doctrine, it was not disposed to promote religion in that way, and a book addressed to the lord chancellor, then Bishop of Ely, was published on the subject. 'The author,' says Burnet, 'showed that, without rewards or encouragements, few would apply themselves to the pastoral function; and that those in it, if they could not subsist by it, must turn to other employments; so that at that time many clergymen

* Heylin's *History of the Reformation*, preface, p. 4, part vii. p. 141. This author is, most inconsistently, in some places profuse in his praises of Edward. But inconsistency is the characteristic of Heylin; and he is the more inexcusable, as he possessed great talents and a clear judgment.

† Burnet, part ii. vol. iii. pp. 14, 15. Cranmer, as well as the Popish bishops, opposed the sale of chaun-

tries, perceiving how they would be disposed of (p. 84). Strype's *Memoirs of Cranmer*, b. ii. c. 24.—Calvin, too, addressed both the archbishop and the protector on this subject, advising the latter to endeavour to prevail upon those who had spiritual possessions to part with them, as they could not prosper otherwise (*Ib.*).

were carpenters and tailors, and some kept alehouses. It was a reproach to the nation, that there had been so profuse a zeal for superstition, and so much coldness in true religion.' He complains of many of the clergy who 'did not maintain students at the university, according to the king's injunctions.' It is lamentable to discover that this selfish spirit was not confined to laymen; 'that in schools and colleges the poor scholars' places were generally filled with the sons of the rich.' It is at least gratifying to learn that the rich began to educate their families; for an Act passed in this very reign, extending the benefit of clergy to peers, though they could not read! 'and that livings were most scandalously sold, and the greatest part of the country clergy were so ignorant that they could do little more than read.'* But what says the good and famous Bishop Latimer on this subject? 'That the revenues of the church were seized by the rich laity, and that the incumbent was only a proprietor in title. That many benefices were let out to farm by secular men, or given to their servants as a consideration for keeping their hounds, hawks, and horses; and that the poor clergy were reduced to such short allowance that they were forced to go to service, to turn clerks of the kitchen, surveyors, receivers, &c.'† Camden informs us, too, that

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* Burnet, part ii. b. i. vol. iii. pp. 374, 375; see also Strype's *Ecclesiastical Memorials*, vol. ii. p. 63; also c. 31. In p. 290, there is a very curious account of a gentleman, Sir George Norton, obtaining a letter from the council to the Bishop of Bristol to surrender to him the manor of Leigh, in Somersetshire. The bishop refused at first, but at last was obliged to consent.

† Latimer's *Sermons*. This prelate conjectured that there were ten thousand fewer students in the universities at this time than formerly (see vol. ii. b. ii. of Strype's *Ecclesiastical Memorials*; *Memorials of Crammer*, b. ii. cc. 8 and 24; Heylin's *List.*, pref. and pp. 17, 60, 117,

131, 132). Even altar-cloths, plate, &c., were grasped at; nay, the very bells did not escape their rapacity (see also Strype's *Memorials*, vol. ii. p. 362). It appears that morals were much relaxed (*Id.* b. ii. c. 23). The people refused to pay tithes to the curates; of whom they would say, 'Our curate is naught—an ass head, a lack latine, and can do nothing. Shall I pay him tithe that doth us no good, nor none will do?' (*Id.* p. 445.) 'Patrons did shamefully abuse their benefices, sometimes by selling them to such as would or could give money for them, or other considerations. Sometimes they would re-farm them; insomuch that, when any afterwards should have the bene-

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'avarice and sacrilege had strangely the ascendant at this time; that estates formerly settled for the support of religion and the poor were ridiculed as superstitious endowments,—*first miscalled, and then plundered.*' The bishops also parted with the lands and manors belonging to their livings, and the courtiers grasped at whatever they could lay their hands on.

This, however, was not the only blemish of the age. Those at the helm of affairs, though they denied infallibility to the pope, arrogated it to themselves, and unfeelingly brought to the stake several of their Protestant brethren, who could not subscribe to all their doctrine. We are informed that Edward himself, green in years as he was, though so intolerant towards Catholics as to refuse his sister Mary the liberty of celebrating mass,* abhorred the persecution of the reformers; and it is probable that his ideas were more enlarged on that point than those of his council; for, independently of the selfish motives that operated on his advisers, it may be admitted that, in such cases, charity is often a safer guide than great abilities; since, while the mind is clouded with passion, its powers are perverted into the melancholy office of furnishing arguments to justify its fury.†

fiſe, there was neither houſe to dwell in, nor glebe land to keep hoſpitality: but the curate was fain to take up his chamber in an alehouſe, and there ſit and play at tables all day' (p. 448). Bribery for all places, and bribery of judges to an aſtoniſhing degree (p. 452). Neal, p. 77.

* Strype's *Memorials*, vol. ii. b. ii. c. 1.

† In the caſe of Joan Bocher, commonly called Joan of Kent, whom his miniſters had reſolved to ſend to the ſtake—for a ſingular opinion—Edward reſuſed to ſubſcribe the warrant for her execution, and Cranmer was employed to perſuade him, who 'told the king he made a great difference between errors in other points of diſcipline, and thoſe which were

directly againſt the apoſtle's creed. That theſe were impieties againſt God, which a prince, as being God's deputy, ought to puniſh, as the king's deputies were obliged to puniſh offences againſt the king's perſon.' Edward was prevailed on; but he ſigned the warrant with tears in his eyes (Burnet, vol. iii. p. 206, &c.). This archbiſhop had alſo his day, as the next deputy conceived it her duty to God to conſign him to the flames. Joan of Kent's heresy, as it appears in the inſtrument drawn up againſt her in the archbiſhop's Register, runs thus: 'That you believe that the Word was made fleſh in the Virgin's belly, but that Chriſt took of the Virgin you believe not, becauſe the fleſh of the Virgin, being the

The various sources of influence which operated in the last reign, continued in this. The rights of the new proprietors to the church lands and revenues were not yet confirmed by time, and a daily accession was either obtained or expected by individuals of great consequence in the community, while several were bound more strongly to the Crown by honours. The state of society, too, obliged the aristocracy and the other independent members of the community to strengthen the executive.

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outward man, was sinfully gotten and born in sin. But the Word, by the consent of the inward man of the Virgin, was made flesh' (Strype's *Life of Cranmer*, p. 181). This, one would think a very innocent error; but it appeared to the archbishop and his coadjutors an unpardonable one. 'Great care,' says Heylin (who declares she justly deserved her fate), 'was taken, and much time spent by the archbishop to persuade her to a better sense; but when all failed, and that he was upon the point of passing sentence upon her for persisting obstinate in so gross an heresy, she most maliciously reproached him for passing the like sentence of condemnation on another woman, called Ann Askew, for denying the carnal presence of Christ in the sacrament; telling him that he had condemned the said Ann Askew not long before for a piece of bread, and was then ready to condemn her for a piece of flesh' (*Hist. of Edw. VI.*, p. 89). Cranmer was concerned in bringing Lambert, the disputant, who fearlessly maintained his cause (he denied transubstantiation) against Henry VIII., to the stake (Strype's *Life of Cranmer*, p. 65), and heretics in general were treated with no greater indulgence by him: yet he had the character among Protestants of uncommon mildness of temper, and, says Burnet, 'was so noted for his clemency, and following our Saviour's rule of *doing good for evil*, that it was commonly said, the way to get his favour was to do him an injury' (vol. i. p. 595). Into such fiends does bigotry

convert the best of men! But an apology can more readily be admitted for Catholics, who enforced the creed in which they had been educated, than for such as Cranmer, whose faith was daily changing. He at one time as furiously persecuted those who denied transubstantiation as ever he did for other imputed heresy, and was long a stickler for pilgrimages, purgatory, &c. (see Strype's *Life of him*, and particularly p. 257.) Latterly, while he became fierce against transubstantiation, he borrowed from Ridley the senseless jargon common to many, 'of a real presence of Christ's body and blood in the holy sacrament, as to exclude that corporeal eating of the same, which made the Christian faith a scorn both to Turks and Moors:—and held, that 'in the sacrament were truly and verily the body and blood of Christ, made forth effectually by grace and spirit' (Heyl. p. 53; see also Fox's *Martyrology*, vol. ii. pp. 425, 767; and Scott's *Somers' Tracts*, vol. i. p. 83). Cranmer, when it was his turn to suffer upon his own principle—that the monarch, as the viceroy of heaven, is bound to punish its alleged enemies—did not show the spirit of Joan Bocher, as, though he went through the last scene with resolution, he had previously tried to save his life by six several recantations (Strype's *Memorials*, vol. iii. p. 232; *Life of Cran.*, p. 383); yet his constancy, in his last moments, is lauded by writers, while poor Joan's firmness is a subject of reproach.

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Repeated insurrections of the most alarming kind threatened the public peace during this reign; some of the insurgents used as their pretext, a desire to restore the old religion; but despair, the effect of pasturage, was the primary cause of the disorders. Could it be shown that the measures adopted against these unhappy men were not always consonant to the principles of constitutional freedom, it still would not prove that the great body of the people either were not acquainted with their rights, or neglected them. For the measures, instead of originating with the court, were generally pursued at the desire of the aristocracy; and if not at the express desire of the other independent classes likewise, at least without opposition from them. It has already been said that the Lord Protector owed the hostility which brought him to the block, chiefly to his unavailing efforts to execute the laws against enclosures, and about depopulation; in a word, to meliorate the wretched condition of the poor.

As Henry had renounced the Papal yoke, not from principle, but from a resolution to gratify his passions by disengaging himself from his marriage with Katherine of Arragon, and entering into new alliances, Mary naturally regarded the reformation as stamped with all the impurity of the original motives that actuated her father's mind—as stained no less with the grossest injustice than the blackest impiety, in degrading her mother from the rank of queen, into the humiliating condition of a discarded concubine, and branding herself with illegitimacy, which seemed at one time to debar her from every hope of succession. The Romish Church, on the other hand, was endeared to her from its sufferings in her own and her mother's cause, and clung to as the sheet anchor which promised to rescue her from bastardy, and to afford a chance of vindicating her right to the Crown. These feelings, which had been nourished in her from youth, must have been rendered still more poignant by the persecution to which she had been exposed for adhering to

the creed of her ancestors ; and the last attempt to defeat her succession, by raising Lady Jane Grey to the throne, as it testified on the part of Protestants the same hostility which had hunted her from her tender years, could not fail to operate unfavourably on a disposition that, though not naturally unamiable, had been soured by misfortune, and perverted by bigotry.* The temper of her advisers, and particularly of her husband—cold-blooded, cruel, and bigoted as Philip was—encouraged persecution, while the continued machinations of the opposite party ever provoked fresh resentment. The disgraceful scenes that occurred during her reign—scenes which have rendered that portion of British history so disgusting (though the same spirit in the reformed had indicated similar intolerance in the two preceding, and was with difficulty restrained in the next)—were congenial to the temper of the great body of the Catholics, who were not actuated merely by the ordinary feelings of a faction struggling for pre-eminence, but were infuriated by bigotry, accompanied with the remorseless cruelty which it is so apt to inspire; by a deep sense of injuries—for their adversaries had set an example of cruelty which they were now doomed to experience in turn ; and, above all, by fear. They justly dreaded that, unless they succeeded immediately in subduing the opposite faction, their triumph would be transient, as that party, at least as numerous as themselves, would recover the superiority, and assert it with their former rigour, inflamed with vengeance for temporary sufferings. Under the dominion of such passions, they, according to the practice of all bigots, attempted to restore the ancient worship by measures which alienated, instead of reconciling, the public mind.

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* Burnet says of Mary—‘She was naturally pious and devout, even to superstition ; had a generous disposition of mind, but much corrupted by melancholy, which was partly natural in her, but much increased by the cross accidents of her life,

both before and after her advancement ; so that she was very peevish and splenetic towards the end of her life’ (vol. iii. p. 432). She narrowly escaped an ignominious death in her father’s time for her religion (*Id.*) ; see her character (*Id.* p. 667).

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It was only in the progress of the next reign that the aristocracy began to acquire that serious cast of mind which distinguished them, as well as the people, at an after period of English history. In all the previous changes, they appear to have been actuated solely by an insatiable thirst for church property,* and the same peers who had voted for the Reformation, together with the bloody laws to enforce it, now gave their voice for a return to the Romish faith, and for all the statutes that carried ruin to the party whom, in the former reigns, they had exclusively protected and encouraged.† The Reformation had brought an immense accession of property to the aristocracy; and a relapse to Popery, as it implied a charge of sacrilege against the plunder of the church, seemed inconsistent with the security of their tenures. But, however much Mary desired the restoration of that property, she knew that the possessors would never surrender it without a convulsion; and, in again acknowledging the supremacy of the pope, she was anxious for the support of the leading ranks. She therefore suppressed her secret purpose of resuming the property for the church, and held out an assurance to the possessors that their rights would be confirmed.‡ It was their interest, on the other hand, to gratify the queen in the article of her faith, since, in the character of legislators, they might direct the current which they could not avert, and, by strenuously opposing her in the first point, they

* 'Though the revenues of the church,' says Strype, 'were miserably spoiled in the days of King Edward, by the nobility and gentry, that got them into their own hands upon pretence of maintaining their houses and state, yet even in this reign did this grievance continue' (*Ec. Mem.* vol. iii. p. 251 *et seq.*). It was not only church lands, parsonages were held by them, tythes gathered, &c. &c. Passages are quoted from a treatise of a Dr. Turner, who complains that though his living was only 74*l.* a

year, the first-fruits were withheld; and gives many instances of their rapacity. 'I would,' says he, 'there were some Act of Parliament made against such valiant beggars' (they stooped to beg of churchmen, but their begging seems to have been equivalent to a demand), 'which vex poor men, as I was, much worse than the lousy beggars do' (see also p. 177).

† Neal, vol. i. p. 83.

‡ Strype's *Ec. Mem.* vol. iii. p. 154.

might provoke her to throw herself upon a more violent party, and thus hazard the loss of all.

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While the Catholics were elated by the countenance, protection, and direct support of the sovereign, as well as by the ruin of such a numerous body of their adversaries, and the Protestants were dismayed by the change, and terrified by the cruelty of government, it is not wonderful that Papists should have been generally successful at elections for Parliament. Like her predecessors, including her brother, Mary, who knew that the attempt to act without the support of parliament would be pregnant with ruin, did not neglect to exert all the influence of the Crown in favour of such individuals as could be depended on by the executive;* and, if we may credit the accounts transmitted, foreign gold was liberally distributed at elections, while Protestants were driven away by violence;

* Strype has given a copy of the letter that was sent to the various sheriffs at the calling of Mary's third parliament, which reconciled the kingdom to the Catholic church. After stating that her chief object was the restitution of God's glory and honour, she proceeds thus: 'These shall be to will and command you, that, notwithstanding such malice as the devil worketh by his ministers, for the maintenance of heresies and seditions, ye now on our behalf admonish such our loving subjects, as by order of our writs, should, within that county, choose knights, citizens, and burgesses, to repair from thence to this our parliament, to be of their inhabitants, as the old laws require, and of the wise, grave, and Catholic sort, such as indeed mean the true honour of God, with the prosperity of the commonwealth.' She then declares, that no man's possessions shall be touched, as was falsely rumoured, 'by such as would have their heresies return, and the realm, by the just wrath of God, be brought to confusion.' She requires the sheriffs speedily to apprehend the spreaders of such rumours, that they

may be sharply punished (*Ecclesiastical Memorials*, vol. iii. p. 155). It is unnecessary to remark, that when we have direct proof of such undue influence having been used in elections for the third parliament, we cannot withhold our assent to the accounts transmitted to us by less unquestionable authority of the practices on other occasions. Mary's letter, however, was scarcely so bad as that adopted by her brother the year before his death; for he concludes his letter thus: 'Our pleasure is, that where our privy council, or any of them, within their jurisdictions, in our behalf shall recommend men of learning and wisdom, in such case their directions be regarded and followed, as tending to the same which we desire, that is, to have this assembly to be of the most chiefest men in our realm for advice and good council' (*Ecclesiastical Memorials*, vol. ii. pp. 394, 395). In spite of all the abuse which was thrown out against Mary for interfering with elections, one of the first acts of Elizabeth was to follow the example (Strype's *Ans.* vol. i. p. 32; *Introd.*, § 3).

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pensions, and bribes in money, rewarded the political profligacy of members in both houses; false returns operated to the exclusion of some, and several of the most spirited were debarred the Lower House by force.*

* Burnet, *Hist. of Ref.* vol. iii. pp. 453, 454. This author quotes from one Beale, the clerk of the council in Elizabeth's time, and he says, 'The same writer informs us, that in many places of the country men were chosen by force and threats; in other places, those employed by the court did by violence hinder the Commons from coming to choose; in many places false returns were made; and that some were violently turned out of the House of Commons' (p. 454, an. 1553.) See, in p. 471, an account of 1,200,000 crowns, equal to 400,000*l.* sterling, having been sent by the emperor, to be distributed amongst the nobility and leading men, to reconcile them to the marriage, and to enable them to carry elections. See also pp. 516, 517. 'Gardiner,' says Burnet, 'had beforehand prepared the Commons' (of the new parliament, which met in April 1554), 'by giving the most considerable of them pensions; some had 200*l.* and some 100*l.* a year for giving their voices to the marriage' (p. 500). 'Common justice was denied in Chancery to all but those who came into these designs' (p. 472).

Mr. Hume appears to treat the idea of undue influence as ridiculous (vol. iv. p. 378), and states that Fox, who is particular in giving an account of all those matters, makes no mention of any such thing. But the preceding note proves that undue influence of a certain kind was resorted to, and yet Fox does not allude to it. Indeed the merit of that writer is in a measure confined to his particular subject—giving an account of the martyrs, and progress of religion. In the 13th of Elizabeth, a member of the Lower House, in the course of a long speech about the propriety of burgesses residing in or near the burghs they represent, to prevent

undue influence, says—'In Queen Mary's time, a council of the realm, not the Queen's privy council, did write to a town to choose a bishop's brother, and a great bishop's brother it was indeed, whom they assured to be a good Catholic man, and willed them to choose to the like of him some other fit man. The council was answered with law, and if all towns in England had done the like in their choice, the Crown had not been so wronged, and the realm so robbed with such ease, at that parliament, and truth banished as it was' (D'Ewes' *Journal*, p. 170). But, as the object which Mr. Hume aims at throughout his history is to establish that the Lower House was regarded as of little importance, and a seat considered a burthen, it may not be improper to investigate the matter a little. Even in the 3rd of Edward I. it appears by the statute of Westminster, c. 5, that undue means were apprehended. For the statute runs thus: 'And because elections ought to be free, the king commandeth, upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election.' The statute 7 Henry IV. c. 15, runs thus: 'Our lord the king, at the *grievous complaint* of his Commons in this present parliament, of the undue election of knights of counties for the parliament, which he sometime made of affection of sheriffs and otherwise, against the form directed to the sheriff, to the great slander of the counties and hindrance of the business of the commonalty,' &c. This was confirmed by 1 Henry V. c. 1. By 8 Henry VI. c. 7, divers penalties were ordained. The abuse had proceeded to a great height, as appears by 23 Henry VI. c. 14. By that statute, any sheriff who made a false return was to pay damages to

per House, the spiritual peers were changed, and
 ber enlarged by a partial nomination of abbots ;

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rieved, of 100*l.*, besides
 ted to the penalties.
 Act is very precise in
 inst such practices. In
 Edward III. the Duke of
 said to have so packed
 that, except twelve, all
 House were under his
 iel, p. 232). It was
 ticles (the 19th) against
 that he packed parlia-
 aforesaid king that, in
 ats, he might be able
 o accomplish the effects
 rong will, did very often
 mands to his sheriffs,
 uld cause to come to his
 as knights of the shires,
 ons by the said king
 ich knights, being his
 ight lead, as often he
 netimes by various me-
 rrors, and *sometimes* by
 ent to those things that
 ial to the kingdom, and
 urthernsome to the peo-
 ecially to grant to the
 bsidy in wool, "for the
 fe," and another subsidy
 ears, thereby too griev-
 ing his people' (Knigh-
 ; Howel's *State Trials*,
 inshed makes it the 17th
 502; and both he and
 ho, by the way, has it the
 the Article somewhat
 'At the summons of
 when the knights and
 ould be elected, and the
 fully proceeded, he put
 eons elected, and put in
 eir places to serve his
 stite' (Hayward, p. 198).
 eady seen that the same
 brought against his suc-
 the Kentishmen under
 complain thus in their
 —an Article which, whe-
 false, proves the under-
 men in that age: 'The
 said shire of Kent maie
 eir free election in the

choosing of knights of the shire :
 but letters haue beene sent from
 divers estates to the great rulers of
 all the countrie, the which embraceth
 their tenants and other people by
 force, to choose other persons than
 the Commons' will is' (Holinshed,
 vol. ii. p. 633). By the way, the
 whole Articles are curious: the people
 complained of being tricked out of
 their properties by great men. On
 the subject of early election laws, see
 Henry, vol. x. p. 59. We have al-
 ready seen how succeeding monarchs
 acted. In opposition to these facts
 and authorities, Mr. Hume says that,
 even in Elizabeth's time, 'a seat was
 regarded as a burthen rather than an
 advantage' (vol. v. p. 183); and in
 a note to this he uses these words :
 'It appeared this session, that a bribe
 of four pounds had been given to a
 mayor for a seat in parliament. It
 is probable that the member had no
 other view than the privilege of being
 free from arrest.' Now, we have
 already seen that Elizabeth sent
 letters to the high sheriffs in the first
 of her reign, and, says Mr. Strype,
 'the same day Robert Gascoyn, John
 Winter, Thomas Clark, &c., messen-
 gers being sent with letters to the
 high sheriffs, I suppose for the pur-
 pose aforesaid, Sir John Mason, trea-
 surer of the Chamber, was ordered to
 pay them such sums as he should
 think necessary' (*Annals*, vol. i. p.
 32). We have likewise alluded to a
 speech upon elections in the 18th of
 Elizabeth; and to that as well as the
 answer by Mr. Bell about noblemen
 interfering with them, we again refer
 (see D'Ewes, p. 170). In the 43rd of
 Elizabeth, a case of violence came
 under the cognizance of parliament,
 and it was stated that the parties
 were ready to engage with drawn
 swords, that the sheriff with the ut-
 most difficulty pacified them; and,
 said he, in a letter which was read
 to the house, 'fearing lest, by draw-
 ing such a multitude together, there

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while upon the temporal, the numerous places at the disposal of the Crown appear to have had a due effect in completing their apostacy.

With all her furious bigotry, Mary was politic enough to endeavour to conciliate the affections of the people. Besides assuring the new proprietors of church lands that their rights would be confirmed, she set out with professing the utmost moderation even in regard to religion—nay, afterwards, gradually only, and as she conceived she might do it with safety, developed her purposes of restoring the old worship; while ungathered taxes granted during the late reign she remitted. To the Suffolk men, who were so instrumental in vindicating her right to the

might great danger and bloodshed happen, I made proclamation that every man should depart' (*Id.* p. 627). Let us now consider the case Mr. Hume alludes to, where the member was convicted of having given a mayor four pounds. Everyone must be aware of the difficulty of proving bribery at an election; and that where evidence can be brought of any sum, however small, having been given, large sums are always presumed. But it may be alleged, that the notions of the present times are inapplicable to the ancient. The course pursued by the Commons of that age, however, sufficiently evinced the reverse; for, in that very case, they annulled all *bonds* granted for votes!—a sure proof of their idea of the extent of the corruption (D'Ewes, p. 182, an. 1571).

Mr. Hume's observations in this place are totally irreconcilable with his remarks upon the 8th Henry VI. c. 7, and 10, c. 2, which restricted the elective franchise in the shires to those possessed of freehold, to the annual value of forty shillings. He there says, 'We may learn from these expressions' (those used in the statute) 'what an important matter the election of a member of parliament was now become in England,' &c. (vol. iii. p. 213). It is inconsistent

with his theory to suppose that the Commons fell back; and, therefore, we must conclude, that as Mr. Hume wrote the late part of his work first, he had formed a theory regarding the constitution incompatible with his subsequent discoveries. In regard to Beale, whose authority he treats with contempt, it may be observed, that, whether the facts narrated by him be true or false, they still afford clear evidence of the understanding on that subject of his own age; for why should he invent or relate circumstances which people never suspected the existence of? His testimony, however, derives strong corroboration from the other indisputable evidence transmitted.

Archbishop Whitgift used all his influence 'to prevent unfit men, especially disaffected to the present constitution of the church, from coming there'—that is, to parliament (Strype's *Life of Whitgift*, p. 508).

On this subject of corruption and undue influence at elections, we cannot forbear from remarking, that undertakers, as the agents for the Crown on such occasions were denominated, were declared in 1614 to be worse than the gunpowder traitors (*Journals of the Commons*, p. 470). See also on this subject p. 478.

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throne in opposition to Lady Jane Grey—an act for which they were ill requited—she declared she did not mean to make any alteration in religion. She assumed a bolder tone to the council; yet, even then, her language was extremely moderate: ‘that though her own conscience was settled in matters of religion, she was resolved not to compel others but by preaching of the word.’ But in a few days she issued a proclamation, in which she intimated that she would not compel others to be of her religion ‘till public order should be taken in it by common assent’—language which indicated that she expected the assistance of parliament in restoring the old worship. The most intolerant, bloodthirsty sects are ever the readiest to exclaim most loudly against the abominable cruelty and injustice of persecution for conscience-sake, when themselves are the object of it;* and, at the beginning of this reign, parliament was incited to give license to persecute by the most bitter invective, in the mouths of the Queen’s councillors and expectant lawyers, against the statutes which had been passed about religion in the two preceding reigns—statutes which they stigmatised ‘as bloody and cruel, like Draco’s laws written in blood, and more intolerable than any that Dionysius or any other tyrant ever made.’†

* ‘Is it possible,’ says Neal, in p. 103, ‘after such a relation of things, for any Protestant to be in love with high commissions, with oaths *ex officio*, and laws to deprive men of their lives, liberties, and estates, for matters of mere conscience? And yet these very reformers, when the power returned into their hands, were too much inclined to these engines of cruelty.’ As persecution, how much soever encouraged by each party against its adversaries, was regarded by its victims with every sensation of horror, so was its authors. Bishop Gardiner is thus described by a cotemporary (Ponet):—‘This doctor hath a swart colour, hanging look, frowning brows, eyes an inch within

his head, a nose hooked like a buzzard, nostrils like a horse, ever snuffing into the wind, a sparrow mouth, great paws like the devil, talons on his feet like a gripe, two inches longer than the natural toes, and so tied with sinews that he cannot abide to be touched, nor scarce suffer them to touch the stones. And nature having thus shaped the form of an old monster, it gave him a vengeable wit,’ &c. (Strype’s *Ecclesiastical Memorials*, vol. iii. p. 271, &c.).

† Strype’s *Ecclesiastical Memorials*, vol. iii. p. 39. In 1554, Cardinal Pole having been introduced into parliament as the pope’s legate, declaimed against the misery of the

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Packed and guilty as her parliaments were, Mary did not find them all compliance. The first was dissolved, because it would not consent to her marriage with Philip—an opposition which proceeded rather from civil than religious motives, and in some degree from a dread of Spaniards engrossing English offices.* The frequent dissolutions prove how anxious she was to try her fortune at new elections; and a band of patriots, perceiving that all their efforts to serve their country in such an assembly were unavailing, openly seceded from the Lower House.† In one instance, too, she got a memorable check, which illustrates the view we have taken of the posture of affairs. In the year 1554 (she was proclaimed in July 1553), when her *third* parliament passed a statute reconciling the kingdom to the Romish see, they added a proviso, that all settlements of the church lands which had belonged to any bishoprics, monasteries, or other religious houses, should continue unaltered, and unmolested by ecclesiastical censures or laws. Cardinal Pole, who had arrived in England as the Pope's legate, though he conceived it

two former reigns. 'For,' said he, 'those that live under the Turk may freely live after their conscience, and so it was not lawful here.' Yet his object was to persuade the legislature to persecute the reformers (Fox's *Martyr.* vol. iii. p. 100). But the Protestants had, after all, little cause to complain, since they suffered upon their own principles. Mary had, as we have said (note, p. 81), narrowly escaped the death of a heretic in her father's time (Burnet, vol. iii. p. 432), and her humble solicitations to be allowed mass in her brother's reign were denied. She was told that the king could not bear with her conduct in this respect longer, 'without some sudden amendment.' But she answered resolutely, her soul was God's, and her faith she would not change, nor dissemble her opinion by contrary doings. 'It was told her that the king constrained not her faith, but

willed her not to rule as a king, but obey as a subject' (Strype's *Ecclesiastical Memorials*, vol. iii. p. 251; see whole chapter, b. ii. c. 1). How ready Cranmer—who is called gentle, &c.—was to persecute, we have already seen.

* Strype's *Ecclesiastical Memorials*, vol. iii. pp. 126, 251.

† Coke, 4 *Inst.* p. 17. There was an information filed by the attorney-general against thirty-nine members for deserting their places in parliament, An. 1 & 2 P. & M., and Plowden, the great lawyer, was one of the number; but he pleaded that he had always attended from the beginning to the end of the parliament, a circumstance which had escaped Mr. Strype (see *Ecclesiastical Memorials*, vol. iii. p. 165). The bill for repealing King Edward's laws about religion was debated six days (Burnet, p. 459).

ent to submit to the proviso, denounced heavy judgments against all who withheld the church's patrimony—elements which these Catholics disregarded; but the pretending that the legate had, in this instance, obeyed his instructions, refused to confirm his act, and issued a bull, by which he excommunicated all who refused to restore the ecclesiastical property.* Excommunication was as little regarded as the legate's incitement of judgments; but from the conduct of the pope, the feelings of such of the party as held none of the lands, and the temper of the Queen, the property laboured under fears of ejection,† which had a great effect on their conduct; and Mary soon convinced that their apprehensions were not altogether groundless. Supposing herself with child, and near her delivery, on the 28th of March 1555, sent for part of her council—Lord Treasurer Paulet; Sir Robert Rochester, Controller; Sir William Petre, Secretary of State; and Sir Thomas Inglefield, Master of the Wards—and expressed to them her intention of restoring that portion of the church lands which was in the possession of the Crown. The answer of the council is memorable: 'The lords thought requisite to direct some course whereby she might satisfy her desires to her own great honour, and not alienate too much at once of the public patrimony.'‡ Giving that it was vain to dissuade the Queen en-

net, vol. iii. p. 530 *et seq.*, and p. 560; Strype's *Ecclesiastical History*, vol. iii. p. 159 *et seq.*; vol. i. p. 95. net, vol. iii. pp. 536, 577. applied to the pope for bulls of institution for holding those lands in *Ecclesiastical Memorials*, p. 162). Osborn says, that in Parsons told him he had a bull amongst Selden's anti-confirmiting the rights of the church to the church lands; and it is improbable that a bull might have been prepared against contin-

gencies, though not divulged, as matters were otherwise arranged, and the pope would naturally renounce nothing he could pretend a claim to. But, on the other hand, the bull in Selden's collection might be in favour of an individual. Church lands sold at low rates (Osborn, p. 376).

† Heylin's *Hist. of Queen Mary*, p. 65; Scott's *Somers' Tracts*, vol. i. pp. 55, 56. See Heylin, p. 41, as to the motives of parliament in reconciling the kingdom to Rome; and in p. 53, the feelings upon a motion to restore the church lands.

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tirely from her purpose. they advised the erection of some religious houses: and the project was immediately executed. This declaration of her feelings, with the re-establishment of some religious houses, was followed by an attempt to persuade parliament into a general restitution of church property: but however that body could express their zeal in cruel laws, they were not prepared for such an act of self-denial, and some of them, laying their hands upon their swords, declared they knew how to defend their own property.*

It is unnecessary to say, in relation to this short reign, that it was a period inauspicious to public liberty. Besides the sources of influence which have already been developed as at this time belonging to the Throne, the Catholic party were too eagerly bent upon improving their present advantage against the adverse faction to quarrel with little stretches of prerogative, while the Protestants durst not attempt regularly to oppose public measures, and the aristocracy had too deep a stake to provoke the queen on subordinate points. The proceedings of such a reign, therefore, ought never to be cited as illustrating the ancient constitutional principles of the English government.†

Humbled by adversity, and terrified by the cruelty of government, the majority of the reformers submitted to a season of injustice, in the hope that, with the life of the

* Heylin, p. 55; Neal, vol. i. p. 96; *Parl. Hist.* vol. i. p. 628; Burnet, vol. iii. pp. 571, 577, 581. The parliament met in October 1555, and showed a very different temper from what they had previously done, being equally alienated from the queen and the clergy. A subsidy was opposed with great vehemence. It was said that the queen had profusely given away the riches of the Crown, and then turned to the laity to pay her debts: why did she not rather turn to the spirituality? (*Id.* p. 581.)

† To strengthen her adherents with

military power, Mary granted licenses of retainer to them against the laws. About two thousand retainers were thus kept up. Elizabeth also granted licenses, but neither so many as her sister had done, nor for such a number of retainers by any individual. Thus Bishop Gardiner had 200, while Archbishop Parker, in the next reign, had only 40, and the Duke of Norfolk 100 (*Strype's Ecclesiastical Memorials*, vol. iii. p. 479). Mary also raised an extraordinary guard (*Id.* p. 428.)

reigning monarch, their calamities would terminate, and their party be raised from degradation. The patience with which many of them endured torments, in the cause of their religion, by begetting admiration, more widely diffused their principles, while it excited the deepest abhorrence against Mary and her husband; and though sham plots—the resort of a wicked party to obtain a pretext for cruelty—were devised, yet the real spirit of revolt, manifested in repeated insurrections, which, though quelled, did neither exhaust or break the spirit of the party,* would lead us to infer that this reign could not have been long protracted.† Many of the leading

* The Protestant party now appealed to the constancy of their martyrs as a proof of the goodness of their cause; but their language was very opposite in the preceding reign. Latimer, in his third sermon before the king, thus expresses himself:—‘This is no good argument, my friends. A man seemeth not to fear death, therefore his cause is good. This is a deceivable argument. He went to his death boldly, *ergo* he standeth in iust and honest quarrell.

‘The Anabaptists that were burnt heere in many townes in England (as I heard of credible men, I sawe them not mysele), went to their death even *intrepide*, as ye will say, without any feare in the world, cheerefully. Well, let them goe. There was in the old doctors’ times another kinde of poysoned hereticks, that were called Donatists: and these hereticks went to their execution, as though they should have gone to some iolly recreation or banquet, to some belly cheere, or to a play. And will you argue then? He goeth to his death boldly and cheerefully, *ergo* he dieth in a iust cause?’ &c. (pp. 55, 56.) The Lutherans abroad called the English martyrs in Mary’s reign, ‘the Devil’s martyrs,’ because they

denied the corporeal presence of Christ in the eucharist (note by Maclaine to his translation of Mosheim, vol. iv. p. 388).

The Protestants appear to have been exceedingly imprudent in provoking vengeance against themselves. After some executions of those engaged in Wyatt’s insurrection, a cat, in the habit of a priest, with a shaven crown, and a piece of paper in her fore claws, in the shape of and representing the wafer, was hung upon a gallows, near the cross in Cheapside, on which one of the rebels had been hanged (Strype’s *Ecclesiastical Memorials*, vol. iii. p. 120; Heylin, p. 47). But the following, which we shall give in the words of Bishop Burnet, was much worse:—‘There were,’ says he, ‘many ludicrous things everywhere done in derision of the old forms, and of the images; many poems were printed, with other ridiculous representations of the Latin service, and the pageantry of their worship; but none occasioned more laughter than what fell out at Paul’s the Easter before—the custom being to lay the sacrament into the sepulchre at evening on Good Friday, and to take it out by break of day on Easter morning. At the time

† As for sham plots, see Burnet, vol. iii. p. 569. For discontents, p. 649. A small supply was given in

1558, after several days’ debate, though the situation of affairs was urgent (p. 651).

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of the taking it out the choir sung these words, *Surrexit, non est hic; He is risen, he is not here.* But then the priest, looking for the host, found it was not there indeed, for one had stolen it out, which put them in no small disorder; but another was presently brought in its stead. Upon this a ballad followed, that their God was stolen and lost, but a new one was made in his room. This raillery was so salt, that it provoked the clergy much. They resolved ere long to turn that mirth and pleasantness of the heretics into severe mourning' (vol. iii. pp. 524, 525). By the way, this passage by the right reverend and worthy prelate is scarcely in good taste, though there is a great apology for the Protestants of that age: out of 16,000 clergymen, 12,000 had been turned out of their livings on account of their marriages, and they naturally were instigated to revenge themselves by satire. But the folly was gross. Some of the Protestant preachers in their private congregations went very far against the queen herself: one Ross used to pray '*that God would either turn her heart from idolatry, or else shorten her days.*' Their mirth at her false conception, for the circumstance 'made much game,' was extremely provoking (Heylin, p. 47).

The kingdom is said to have been greatly afflicted by Divine vengeance during this reign, which was manifested in pestilence, famine, immoderate rains, and at other times immoderate drougths, tempests, deluges, strange diseases, &c. &c., the like of which had never been known before (Strype's *Ecclesiastical Memorials*, p. 476; Burnet, p. 661). Elizabeth's reign was free from such evils; but then the people suffered from another source. 'Tis strange,' says Strype, 'how sorceries prevailed, and the mischiefs they did' (*Annals*, vol. i. p. 7). Bishop Jewel, in a sermon before her majesty, says,

'By the way, to touch a word or two of the matter, for that the horrible using of your poor subjects enforceth thereunto. It may please your grace to understand, that this kind of people, I mean witches and sorcerers, within these few last years, are marvellously increased within your grace's realm. These eyes have seen the most evident and manifest marks of their wickedness. Your grace's subjects pine away even unto the death, their colour fadeth, their flesh rotteth, their speech is benumbed, their senses are bereft. Wherefore your poor subjects' most humble petition unto your highness is, that the laws touching such malefactors may be put in due execution. For the shoal of them is great, their doings horrible, their malice intolerable, the examples most miserable: and I pray God they never practise farther than upon the subject' (Jewel's Works, p. 204). Many have laughed at this queen's successor for his superstition; but the opinions which he maintained were universal in that age. Parliament passed statutes against witches. Burghley had such an opinion of astrology, that he had Elizabeth's nativity cast, to ascertain whether she would marry, and wrote out the judgment with his own hand, in Latin. A copy of it is preserved by Strype (*Annals*, vol. ii. p. 16; Appendix, No. 4). Sir Thomas Smith 'studied astrology much' (*Id.* p. 17). In an after age, Sir Matthew Hale declared that he had no doubt whatever of witchcraft (Howel's *State Trials*, vol. vi. p. 690). The whole trial and matter furnished there, are remarkably curious. Addison, at a later period, says, 'I cannot forbear thinking that there is such an intercourse and commerce with evil spirits, as that we express by the name of witchcraft.' Again, he says, rather unphilosophically, 'I believe, in general, that there is such a thing as

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ator, that freedom which was inhumanly denied them in England. Had they consulted their own bosoms, they might not have been disappointed in the result, as they would there have discovered that intolerance was not confined to Catholics. The rigid Lutherans refused them an asylum, because they rejected the idea of the corporeal presence of Christ in the sacrament.* But in France, Geneva, and those parts of Switzerland and Germany where the change had been more complete, they were received and treated with the utmost kindness. Yet exile, and all the sufferings of their party, could not inspire them with unity or forbearance towards each other. King Edward's liturgy had been regarded by many of the English Protestants as only an approach to reformation, and further alterations were meditated. Part of the exiles, therefore, who disliked the ceremonies, as savouring too much of the dregs of popery, resolved to follow what they deemed a purer worship; but another party, maintaining that, however the matter might be viewed abstractly, this was not a time for splitting upon minor points, and giving their enemies an advantage, by the restless spirit of change which their conduct implied, adhered strictly to the service-book. Forgetting their mutual grand adversaries, these parties quarrelled bitterly upon this subject. Foreign divines were appealed to, who, of course, interfered only to widen the breach; and the nonconformist party, having got the approbation of

witchcraft; but, at the same time, can give no credit to any particular instance of it' (*Spect. paper on Witchcraft, White Mole*). It is probable that all the phenomena described by Jewel really occurred; for, whoever will look into Bryan Edwards' *History of the West Indies*, will find that the consequences of the imaginary powers of Obeah upon the negroes are not inferior to the bishop's description. A negro who suffers under this imaginary evil, 'believes himself to be the victim of

an invisible and irresistible energy. Sleep, appetite, and cheerfulness forsake him; his disturbed imagination is haunted without respite; his features wear the settled gloom of despondency; dirt, or any other unwholesome substance, becomes his only food; he contracts a morbid habit of body, and gradually sinks into the grave' (vol. ii. p. 91, edit. 1793).

* Note by Maclaine to his translation of Mosheim, vol. iv. p. 388. edit. 1819.

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Calvin, were more strongly attached to their own opinions, while they imbibed, or rather were confirmed in those republican principles of church government which afterwards distinguished so great a portion of that body who were denominated Puritans. To this schism has been traced the commencement of that great division of Protestants into conformists and nonconformists, which was, in an after age, productive of such consequences ; but appearances had indicated something of the kind earlier, and even in England they could not agree in the very hottest hour of persecution. Notions regarding predestination, free-will, and grace, which subsequently became so important, even then agitated the reformers, while some professed Arianism and other tenets equally remote from the ordinary belief.*

But however the reformers might disagree among themselves, they all, as a body, looked forward to Elizabeth as to a deliverer, and they were not disappointed, though her measures indicated the spirit of a politician rather than of a religionist. Dangers beset her very entrance to the throne, and seemed to thicken upon her in the progress of her reign. The Catholic party, numerous and formidable, could not easily bear the overthrow of their religion, accompanied with individual disgrace, nor its ministers and great adherents relinquish political as well as ecclesiastical ascendancy; and their predilections were encouraged, their plans for recovering the superiority fomented, not only by the Pope, but by foreign princes who wished to embroil English affairs, while the Romish clergy, driven from their livings, were ever ready to stimulate flagging zeal and flatter it with hope. Bigotry, when associated with politics, besides the black passions to which it directly gives birth, covers with a pretended holy garb, even to one's own eyes, the most selfish and malignant ;

* Strype's *Ecclesiastical Memorials*, vol. iii. cc. 18, 31, 33, 41, 47 ; *Life of Grindal*, p. 10 ; Heylin's *Hist. of Queen Mary*, p. 59 *et seq.* ; Strype's

Annals, vol. i. p. 103 ; Burnet, vol. iii. p. 612 *et seq.* ; Neal, p. 103 *et seq.*

while, by shutting against its opponents every avenue of sympathy, the real source of moral feeling, it stifles the voice of conscience, and, by gaining the support of a faction, kindles indignation against public reproach, that would otherwise humble the guilty under its lash. It was necessary to disarm such a body; it was prudent not to drive them to despair; it was equally politic and just to resist in their favour the violence and vengeance of the Protestants; and too much praise cannot be given to the wisdom of Elizabeth's council, at least in the early part of her reign. Her great minister, Cecil, was the first to broach the principles of toleration, and point out the only grounds upon which any interference with religious sects can be justified.* But Elizabeth showed that her forbearance towards the Catholics savoured of partiality, on account of their avowed political principles, which accorded with her own ideas of prerogative, while, for an opposite reason, she entertained an aversion to the Puritans.† The pomp,

* Heylin tells us that Cardinal Pole dissuaded from persecution, 'following therein, as he affirmed, the counsel sent unto the queen' (Mary) 'by Charles the Emperor, at her first coming to the Crown, by whom she was advised to create no trouble unto any man for matter of conscience, but to be warned unto the contrary by his example, who, by endeavouring to compel others to his own religion, had tired and spent himself in vain, and purchased nothing by it but his own dishonour' (*Hist. of Queen Mary*, p. 47). Hence I am not sure that I have not gone too far in ascribing the merit to Burleigh of first broaching the principles of toleration. But his whole paper is excellent (Scott's *Somers' Tracts*, vol. i. p. 164 *et seq.*). Whoever attentively peruses it may question the account given by certain historians of the cause of Elizabeth's policy towards Scotland. It appears to have been chalked out by Burleigh at the very beginning of her reign.

In regard to persecution, he says,

'I account that putting to death doth no ways lessen them, since we find by experience that it worketh no such effect, but like the hydra's heads, upon cutting off one, seven grow up, persecution being accounted as the badge of the church, &c.; so that, for my part, I wish no lessening of their number but by preaching, and by education of the younger under good masters' (p. 167). He alleges that the people of all ranks loved Egypt chiefly for the flesh-pots (*Ib.*).

See a letter from Sir F. Walsingham to a French gentleman, in regard to the principles of Elizabeth's government in religious matters, in Burnet, vol. iii. p. 751.

† Elizabeth told Sir Francis Knollys that 'she was as much in danger from Puritans as Papists' (Strype's *Life of Whitgift*, p. 362. See in Appendix, p. 76 *et seq.* the points of doctrine disputed; and in *Annals*, an order to have wafer-bread—'for the giving the more reverence to the holy mysteries'—vol. i. p. 165).

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ceremonies, and incomprehensibilities of Catholicism, inspire the vulgar mind with awe and veneration for the clergy, who, when they depend in any degree upon the prince, are generally disposed to advance the prerogative, that it may react in their own favour: it is not the religion of the heart, but of the imagination, which enslaves a people, and of the latter Elizabeth appears to have ardently desired the advantage. She declared that religion had, under her brother Edward, been stripped of too many of its ornaments, and she laboured to restore them, assigning as a reason, that the Catholics might join the English church when they perceived that the departure from the Romish was not over-great: she reluctantly acquiesced in the removal of crucifixes from churches, and preserved one in her own chapel: she insisted on retaining the vestments of the clergy, which were now abhorred by a great part of the people: she ordered a committee of divines to review King Edward's liturgy, and strike out all offensive passages against the pope, as well as make the people's minds easy about the corporeal presence of Christ in the sacrament. Perceiving how full of intrigue, and zeal for the advancement of their order, the Romish priesthood were, from their celibacy, which cut them off from the common sympathies of mankind, she tried to prevent the English clergy from marrying, and would have absolutely forbid it had it not been for the interference of her great adviser, Secretary Cecil. Though she was thus far ruled, she never could be prevailed upon to revive the law of Edward VI. which authorised the marriage of ecclesiastics, but only connived at what was not fully warranted by law—a course which, as many of the leading clergy were married, kept them at her devotion.*

* There was a strong Lutheran party in the kingdom, who believed in the real presence, &c. (Strype's *Annals*, vol. i. p. 53). In proof of the text generally, see *Id.* pp. 81, 88; the whole of chap. xiii. p. 214 *et seq.*; chaps. xli. xlii. xliii.; Burnet,

vol. iii. p. 676 *et seq.*; Neal, p. 122 *et seq.*; Strype's *Life of Parker*, pp. 96, 107–8–9. Archbishop Parker being married himself, was naturally very anxious for the restriction upon the marriage of the clergy being taken off; and I conclude that he

But it may not be improper to take a view of the various causes of the great influence in the state which was centred in this queen's person. At the commencement of her reign, the aristocracy were, with a few exceptions, as has been already remarked, indifferent to religion. Their whole object, from the beginning of the Reformation, seems to have been the plunder of the church. While, in the preceding reign, they framed such bloody laws against Protestants, they engrossed the livings of the clergy with the most unblushing effrontery; and, to the disgrace of

had been guilty of a little pious fraud in regard to the story of five or six priests being prosecuted at Worcester for having five or six wh—s a-piece; a fact 'which,' says Strype, 'was so notoriously scandalous, that the said bishop, in a sermon at the Cathedral a few days after, spake of it, and took occasion thence to show how necessary it was to allow priests' marriage' (*Id.* p. 78). In 1572, the people were much alarmed for the queen's safety in consequence of the number of Catholics about the court (*Id.* p. 352. See Heylin's *History of Elizabeth*, pp. 111, 123–4). In these two last pages we have a proof of the pomp and pageantry in worship which she proposed to establish. When a Mr. Nowel had spoken less reverently than she wished of the sign of the cross, she called aloud to him to return from that ungodly digression to his text. 'On the other side, when one of her divines had preached a sermon in defence of the real presence, on the day commonly called Good Friday, anno 1565, she openly gave him thanks for his pains and piety' (p. 124). All this of course meets with the approbation of Heylin. Elizabeth was always a politician. In her sister's time, the test of heresy was transubstantiation or the real presence, and Elizabeth having been asked what she thought of the words of Christ, 'This is my body'—whether she believed that the true body of Christ was in the

elements, is said to have answered thus:

'Christ was the Word that spake it,
He took the bread and brake it,
And what the Word did make it,
That I believe and take it.'

In this manner she escaped from the difficulty; yet had her object been more than to secure a party, she would not have acted so differently when she became queen. But the wisest doctors amongst the Protestants are justly accused by their enemies of constantly changing their opinions on this subject. 'As unto Dr. Cranmer, late Archbishop of Canterbury in this realm,' said Dr. Feckenham, Abbot of Westminster, in parliament, anno 1559, 'how contrary was he unto himself in this matter, when, in one year, he set forth a chatechisme in English and dedicate the same unto King Edward VI. wherein he doth most constantly affirm and defend the real presence of Christ's body in the holy eucharist; and very shortly after, he did set forth another book, wherein he did most shamefully deny the same.' Dr. Ridley at one time urged transubstantiation in the keenest manner, and then deserted it (Scott's *Somers' Tracts*, vol. i. p. 83). Their later doctrine seems to have been consubstantiation or impanation. Yet these doctors were ready to burn all that differed from what they happened to believe at the moment.

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the peerage, the same individuals who had voted for King Edward's laws, passed those in Mary's reign, and now again were equally complaisant to Elizabeth. The Commons were indeed changed, for elections were freer—though this queen, like her predecessors, endeavoured to procure the nomination of particular individuals, by bribes and by letters directed to the high sheriffs—but the great body of the gentry are implicated in the charge of robbing the church in Elizabeth's reign, as well as in the three preceding. The patrons frequently kept churches vacant that they might draw the livings; and, says Bishop Jewel, 'I speake not of the curates, but of parsonages and vicarages—that is, of the places which are the castles and towers of fence for the Lord's temple. They seldome passe now-a-days from the patrone, if he be no better than a gentleman, but either for the lease or for present money. Such merchants are broken into the church of God, a great deale more intolerable than were they whom Christ whipt out of the Temple. And this is done, not in one county, but thorough England. A gentleman cannot keep his house unless he haue a parsonage or two in farme for his provision.' When reproached with their sacrilege, they insultingly bade the preachers of the gospel live as the apostles did. But the worthy bishop shows that this could not be expected, as the preachers thought themselves too good to become the others' slaves. 'Therefore,' says he, 'they are weary and discouraged; they change their studies: some become prentices, some turn to physic, some to law; all shun and flee the ministry;—whence he prophesies desolation to the church.* Men who acted upon

* Jewel's Works, *Sermons*, pp. 181, 191, 194. 'The noblemen and gentlemen, patrons of benefices, give presentations of benefices, either to be farmers themselves, or else with exception of their own tenths, or with some other condition that is worse than this' (p. 181). He says that those corrupt patrons 'leauue to take

charge over the people, blinde Sir Johns, not only lacke latine, but lacke honesty, and lacke conscience, and lacke religion' (*Id.* p. 185). The state of morals was represented by this prelate as extremely corrupt. 'Thefts, &c., were so common, as if it were not only lawful but commendable; as if sinne were no sinne, and

such principles, yet scarcely secure in their property, were not likely to quarrel with points of ceremony or discipline; and the compliance of parliament, on many occasions, is therefore not wonderful. But had it been otherwise, Elizabeth must still have had a commanding influence in public affairs. From the numbers and zeal of the Catholics, the reformers were kept in perpetual alarm; and, while they regarded the queen as the bulwark of the Protestant cause, the Papists considered her life the grand obstacle to their recovering the ascendancy. By joining the Romish faction, she might have dashed all the counsels of the ruling party; and, fully sensible of it, she at one time, when crossed in her measures, hinted, to the dismay of her Protestant subjects, the possibility of her being forced, by their perverseness, to throw herself into the arms of the Catholics.* The reformers themselves, though they all agreed in their hatred of the Papists, and in regarding the queen as necessary to them against that body, were prevented by their mutual dissensions from acting in concert, to obtain a reform of what many deemed imperfect in the new establishment and creed, while the severity which was extended to the various sects fell short of what each would have inflicted on all its adversaries.† Though, therefore, by adopting high church principles, and favouring the Lutheran party, she disobliged the other sects, she seemed only to be in the same situation as that she would

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hell-fire a fable' (pp. 221, 241; Strype's *Life of Whiggift*, p. 509; Hayne's *State Papers*, p. 586). Mr. Hume has quoted a passage from this paper, which was written by Cecil, afterwards Lord Burleigh, about the decay of obedience in civil policy, to show that the ideas of the people, in Elizabeth's time, had become more liberal than in the more ancient; but from Cecil's words, that 'it would astonish any wise and considerate person to behold the desperation of reformation,' it is evident that he alluded to the nonconformists (*Ib.*).

* Strype's *Life of Parker*, p. 109. See *Annals*, vol. i. pp. 452, 453, as to the doctrine of the English church.

† Neal has occasionally a remark upon the intolerance of the nonconformists or puritans themselves; but the general strain of his work is to stigmatise as the last degree of tyranny all interference with the consciences of the puritans, whom he represents as harmless, while in truth they aimed at political and ecclesiastical ascendancy, and thirsted for an opportunity of playing the game of their oppressors.

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have found herself in by making the principles of any other sect the rule of her government.

The supremacy was immediately restored to the Crown, and matters were settled nearly upon the same grounds as in her brother's reign. But, availing herself of her situation, she affected to have derived from the Act of Supremacy, though it conferred no such power, a discretionary right of regulating ecclesiastical affairs.* The Act contained a clause, however, authorising the erection of a new court, that of the High Commission, from whence sprang many alarming evils which we shall afterwards detail.

In the course of this reign the higher classes became imbued with a spirit of religion to which they had hitherto been strangers. Families were now well educated, and, as the clergy were the teachers, the principles of the Reformation, which, from the nature of things, then so deeply agitated its ministers, were warmly transfused into their pupils. The majority of the clergy, however, being at that time hostile to the ceremonies retained, as well as to the church government, instilled their own ideas into the minds of the rising generation. The clergy were most interested in the nature of the ecclesiastical establishment; the people, including all ranks, in the purity of worship and doctrine. The clergy were, no doubt, anxious on this point too; and, being well aware that, without popular support, they never could attain their object as to government, they, from both motives, zealously dwelt upon the deformities which, they maintained, equally stained the doctrine and worship of the church. This spirit, not latterly subdued by fears about the church property which the aristocracy had acquired—for in the progress of this reign it was too well confirmed by time to be recovered by any union between the sove-

* In 1550, she gave this liberal interpretation of the Act herself, officially (Strype's *Annals*, vol. i. p. 161; Heylin's *Hist. of Queen Elizabeth*, p. 109).

reign and the more zealous Catholics—was calculated to bring about a greater change in religion. It was, however, in the meantime, counteracted by a terror of wild sects, to whom levelling principles were ascribed, and the evident ambition of the leading clergy who espoused it, as well as by the necessity of entrusting great powers to the executive, both to secure the queen to the Protestant cause, and to enable her to defeat the designs of the Romish party, encouraged and assisted by foreign princes.

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Episcopal government, while it gave considerable livings to a few, left the great body of the clergy in poverty, and, by the system of patronage and the power of the bishops, defeated the ambitious hopes of the aspiring, who conceived themselves qualified to take a lead in religious affairs. These were, both from the different qualities likely to recommend them, and from a hope of vast power and of recovering, by popular assistance, the church property out of the sacrilegious hands that detained it, as well as of exempting their body from every species of tax, more inclined to owe their promotion to popular suffrage than either to the sovereign or individual subjects. From this as well as, it is to be hoped, from piety, they maintained that the only true church was the Presbyterian; that the church government of England was unlawful and false, the offices of that church being invented by the magistrate, ‘and so no members of Christ’s body;’ ‘that she’ (the queen) ‘injured the church to keep the true officers out; that she maimed and deformed the body of Christ; that every Christian magistrate was bound to receive the government by pastors, doctors, elders, and deacons, into the church within his dominions, whatsoever inconvenience might follow from it; that those who withstood it held it to be lawful for her Majesty and the state to bid God to battle against them.’ ‘That none could be good and sound subjects that defended the present false, bastardly, unchristian, ecclesiastical establishment—and that they who

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did so were traitors to God and His word. They insisted, therefore, that all bishoprics and deaneries should be dissolved; that all patronages should be taken from her Majesty and others, and all spiritual offices be filled by popular election, or by their elderships; while they declared it to be sacrilege to detain from the church the property which had belonged to the religious houses.' 'That the ministers and others of the ecclesiastical function ought to be exempt from paying first-fruits, tenths, subsidies, and other impositions—like as the priests of Egypt were, even under a heathen king.' 'That ecclesiastical laws should be made by their synods and assemblies, and ecclesiastical causes'—it is not easy to determine what they would have comprehended under this head—'be cognizable only by their eldership, consistories, or presbyteries; then, on appeal, by the provincial courts; and finally, by their assemblies.' 'That *all* persons, as well as meaner persons, must willingly be ruled and governed, and must obey those whom God has set over them—that is,' observes the writer, supposed to be the Lord Keeper Puckering, 'the just authority of ecclesiastical magistrates, and must lick the dust of the feet of the church; that her Majesty, being a child of the church, is subject to censures of excommunication by their elderships, as well as any other people; that no man ought to aid, comfort, salute, or *obey*, an excommunicated person; and that as long as any person is excommunicated, he cannot exercise the magistracy.' By natural inference from the right and effect of excommunication, the doctrine arrogated for the church the power of deposing princes and other magistrates; but sentiments about deposing princes—by an act of the estates, or parliament particularly, and circumscribing their power, nay, altering the whole frame of the constitution—were expressed by those preachers in language far more unequivocal.* Their intolerance

* Strype's *Annals*, vol. iv. No. 94 against the established ministry, *et seq.* The language of the puritans whom they called the *supposed* mi-

likewise be inferred from the consequences which
wished to attach to excommunication ; but they did

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, is extraordinary :—‘ Will you unto them and see what they Alas ! you can behold here no sight, but a multitude of desolate and forlorn atheists, that have no evil day far from them, and vowed to persuade their own that God’s holy ministry, and saving health of men’s souls, are no more to be regarded. You find amongst this crew nothing but a troop of bloody soul-murders, sacrilegious church-robbers, such as have made themselves rich with the blood of men’s souls, and the utter ruin of the church. The endeavour of which cursed nation, ever since the beginning of Majesty’s reign, hath tended her way than to make a sure way to keep the church in bondage ; being bound in their hands, it is not dare, for fear of being persecuted, to seek for liberty. Of men contained within the numerous and ambitious prelates, proud archbishop and bishops, and murdering non-residents, and ignorant, idol shepherds and dumb dogs, I will say no more but this—How long, just and true, dost Thou suffer inheritance to be polluted and waste by this uncircumcised nation ? O ! Thou that hearest my prayer,’ &c.—‘ with speed thrust these caterpillars as one man out of church, and let the memory of them be forgotten in Israel for (Strype’s *Life of Whitgift*, pp. 47). See also Neal, vol. i. p. 367, in proof of the virulent invective uttered by the nonconformists. He spoke the puritans of the time, and in this they followed the example of all parties. The nation lamented the decay of all ranks, civil subordination, and religion. ‘ But obedience is gone,’ Dr. Feckenham in 1559 ; ‘ humility and meekness clean abolished ; us, chaste, and strait living

abandoned, as though they had not been heard of in the realm ; all degrees and kinds being desirous of fleshly and carnal liberty, whereby the springalls and children are degenerate from their natural fathers, the servants contentious of their masters’ commandments, the subjects disobedient unto God and all superior powers’ (Scott’s *Somers’ Tracts*, vol. i. p. 84). The papists called the people ‘ swine, and rude and rash people ’ (Jewel, p. 391). ‘ It is thought,’ says Jewel, in his answer to Harding, ‘ to be the surest fence and strongest ward for that religion, that they’ (the people) ‘ should be kept still in ignorance and know nothing. Mr. Harding, both in this place, and also before, calleth them all dogs and swine, as insensible and brute beasts, and void of reason, and able to judge and conceive nothing’ (p. 406). ‘ Tertullian saith, the heathens, in the time of the primitive church, were wont to point out, in mockery, the God of the Christians with an ass’s head, and a booke in his hand, in token that the Christians professed learning, but indeed were asses, rude and ignorant. And do not our adversaries the like this day against all those that professe the gospel of Jesus Christ ? And, say they, who are they that favour this way ? None but shoemakers, tailors, weavers, prentices, such as never were in the university, but be altogether ignorant and void of learning’ (*Id.* p. 203). The reformers were not behind the Catholics in abuse : even Wickliffe’s charges against the popish clergy, that they debauched the wives of the nobles, gentry, &c., ‘ promising to make answer to God for their sins,’ &c., were revived (Strype’s *Ecclesiastical Memorials*, vol. iii. p. 112 *et seq.*). See *Annals*, vol. i. p. 123, in proof of the right which was claimed to depose princes, who, it was said, all owed their title only to election.

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not stop there. They insisted that the judicial laws of Moses for punishing certain offences by death ought to be observed, and that neither prince nor law could in justice save the lives of wilful offenders, such as blasphemers of God's name, conjurers, soothsayers, persons possessed of an evil spirit, heretics (a word which, of course, comprehended all who disputed their discipline, doctrine, or laws), perjured persons, *wilful breakers of the Sabbath-day*, neglecters of the sacrament without just reason (in plain English, those who dissented from them in religious matters), such as are disobedient to parents, or that curse them, incestuous persons, a daughter committing fornication in her father's house, adulterers, all incontinent persons, saving simple fornicators, and all conspirators against any man's life. Some of the offences enumerated are ridiculous, but attributable to the superstition of the age; the punishment proposed for some others is absurdly severe; and, though some of them are unquestionably such as must fall under the rigorous chastisement of the laws in every well-governed state, yet it is quite indisputable that those against heresy and neglect of certain observances, &c., struck at every sect but their own, and consequently breathe an intolerance which leaves no doubt that, had these men, who loudly complained of persecution for conscience' sake, been allowed the power they demanded as a divine right, they would have set an example of cruelty and oppression which would have obliterated the memory of sufferings under the hierarchy, or made them appear mild in the comparison. As some of their tenets were subversive of civil government, so others were equally so of civil jurisdiction; for they held 'that all matters arising in their several limits (though they be merely civil and temporal), *if there happen to be breach of charity, or wrong be offered by one unto another, might and ought to be composed by the eldership*; and he that should refuse to be advised, should be excommunicated' (that is, be in the wretched condition of

persons whom none ought to aid, comfort, salute, or obey). 'That ministers of duty might, but should determine and decree of *all*, both *civil* and ecclesiastical causes, though not of the very fact, as civil magistrates do, yet touching the right and what the law is, for that thereof they are appointed by God to be administrators.' *

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Taken together, the pretensions of these men would, if conceded, have had the effect of absolutely transferring both the legislative and judicial power of the state to their own body; but their folly was equal to their presumption. They demanded, as a divine right, the restitution of the church's patrimony, as if the proprietors would have parted with it by anything short of a revolution; and though they might have for a time embroiled the state, it is impossible that mankind should have, voluntarily, long submitted to their tyranny. The necessary consequence would have been, that those who had not an immediate interest in supporting the clergy would have assisted the civil government in either subduing the

* Strype's *Annals*, vol. iv. No. 94. In regard to the tenets of the non-conformists, see *Life of Grindal*, pp. 1, 6, 13; *Life of Parker*, pp. 220, 413. Several of them enjoyed dignities in the church. 'They are content,' said the Archbishop of York, 'to take the livings of the English church, and yet affirm it to be no church' (*Ib.* and p. 414; see also pp. 446, 447, 492). 'It is remarkable also,' says Strype, 'what resolutions were given to other questions, found amongst the letters of Lord, another of their ministers, which were also seized: namely, "How, when all the church's revenues, that then were, should be converted to maintain their presbyteries, her Majesty should be recompensed for her first-fruits and tenths: for that they would pay none, as being unlawful; and how the archbishops and bishops, &c. should be provided for, that the land be not filled with rogues;"—which opprobrious term was applied to the

prelacy, who were to be turned a-begging (*Life of Whitgift*, p. 294 et seq. 346 et seq. 416; *Ap.* p. 80; *Annals*, vol. i. p. 452; Heylin, p. 132). The following is a character of puritanism: 'Imagine that you see the external face of that church, where you might see so many thousand superintendents, so many elderships advanced in and about the church, to make orders, and to censure at pleasure, where the people give voices, the laity lay on hands, the majesty of the prince excluded from all sway in the presbytery: all antiquity forlorn; all councils utterly repelled; doctrine divided from exhortation; laymen deacons of the church; parish bishops; parrot preachers; the universities degraded of the privilege of granting degrees; cathedral churches by greedy wolves spoiled; all courts of justice overthrown or impaired by the consistorial court of elders' (*Life of Whitgift*, p. 345).

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ecclesiastical to a condition compatible with the general welfare, or in entirely rooting out the system as pregnant with public and private mischief.

Such daring principles, however, were avowed by a part of the nonconforming clergy only. The great body indicated by their language that they conceived prayers, and petitions to the governors, the only legitimate way of seeking a reformation of abuses. In civil affairs they professed principles approaching to passive obedience, and in religious, while they only prayed for relief, a readiness to submit to punishment where they could not conscientiously comply with the established ceremonies or doctrines. But, as they opposed the hierarchy and the bent of the government, they were, according to the never-failing practice of ambitious rulers, confounded with their most violent brethren, the submissiveness of their language being attributed to weakness and fear on the one hand, and to the desire of obtaining good livings in the very church they abused, on the other, not to any real difference in their sentiments or in the tendency of their principles; and it cannot be denied that, though a few of the nonconforming clergy would appear to have desired an abrogation of some ceremonies only, the practice and principles of the majority of those who affected such meekness did not correspond with their professions. It was not simple toleration, but power, together with the whole ecclesiastical revenues, which they aspired to. While they denied the lawfulness of the established church, they did not scruple to accept of livings under it; while they professed obedience in all civil affairs, they did not mean to confine their legislative and judicial powers, which they would have had independent of civil authority, to matters that, in common sense, are strictly spiritual. They denied toleration, and, as their censures were to be accompanied with other than spiritual consequences, they would have drawn within the pale of the church the properties, liberties, and even lives of the people. When this is con-

sidered, though all intolerance towards them must be condemned as impolitic and unjust, yet it is impossible to have much sympathy with their sufferings, since the punishment met rather their ambitious projects than their conscientious scruples, and fell far short of what they themselves would have inflicted on every sect that differed from them.

As, with the exception of such as expected distinction in the elderships, the nonconforming clergy only were interested in entertaining such views, we may presume that they were confined to that body. The people considered those matters in a religious light only, and, from what appears, would have been satisfied with a dispensation from ceremonies, and some slight alterations in doctrine. The intolerance towards them, therefore, assumes a different character; and, had the hierarchy not been blinded by selfishness and love of power, they would, in order to reconcile the people and detach them from ambitious preachers, have relaxed the ceremonies, as well as made slight concessions in doctrine. Instead of, for trifling nonconformity, suspending men of talent who held livings in the church—by which they equally created enmity to the establishment in such individuals, and recommended them to the people—and supplying their places with persons notoriously insufficient—as shoemakers, tailors, millers, and cobblers*—they ought to have connived at trivial marks of nonconformity, and secured the talents of good preachers for the support of the present system.

The higher classes, however they might desire to circumscribe the power of the hierarchy, and wish a reformation in regard to ceremonies, non-residences, pluralities, and even doctrine, were not likely to promote the ambitious views of the nonconforming clergy, whose object it was to abridge the privileges and lessen the property of the aristocracy: and the hierarchy, equally

* Neal, vol. i. p. 473; see also pp. 367, 428, 476-9, 489.

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with the ordinary ministers of the Crown, adopting the language of their popish predecessors whom they had supplanted (for the language peculiar to men in place, and to those out of place, has been nearly uniform in all ages), laboured to convince the aristocracy that, however the sectaries might pretend religious motives for disobedience, their real purpose was to subvert the rights of property, and introduce the same equality into the state as they called for in the church. 'Surely,' said Archbishop Parker, in a letter to the lord treasurer, 'if this fond faction be applauded to, and borne with, it will fall out to a popularity' ('he meant a parity and equality in the state as well as the church,' observes Strype, in a parenthesis); 'and, as wise men think, it will be the overthrow of all the nobility.*' On another occasion he remarked to Lord Burleigh, 'that how secure soever the nobility were of these puritans, and countenanced them against the bishops, they themselves might rue it at last; and that all these men tended towards, was to the overthrow of all honourable quality, and setting a-foot a commonwealth, or, as he called it, a popularity.†' But the view which was taken of their alleged designs is so concisely stated in the following passage from Attorney-General Popham's speech in the Star-Chamber, at the trial before that court of Sir R. Knightly and others, for sedition, that we shall make no apology for inserting it. 'This sort of sectary,' says he, 'are of no settled state, but seek to transform and subvert all. These men would have government in every several congregation, severally in each province, in every

* Strype's *Life of Parker*, p. 447; see also p. 492. This archbishop alleged that his object in enforcing uniformity was regard for the law. He, therefore, in 1575, warned the lord treasurer to watch over the puritans. 'Doth your lordship think,' says he, 'that I care either for cap, tippet, surplice, or wafer-bread, or any such? But, for the law so established, esteem them' (*Ib.*).

It is sufficiently proved in the text, that it was not an idea peculiar to the Stuarts, that the Presbyterian establishment was inconsistent with monarchy. (See farther upon this subject a letter from the Dean of York to Lord Burghley, dated October 6, 1573, in Murden's *Collection*, p. 261. See also Strype's *Annals*, vol. iv. p. 142.)

† Strype's *Life of Parker*, p. 447.

diocese, yea, in every parish, whereupon would ensue more mischief than any man by tongue can utter. They themselves cannot agree amongst themselves, but are full of envy and emulation; for what greater emulation than to fall to contention, and from contention proceed to violence? But they stay not here, nor contented with railing against the church and the state thereof, but proceed to court and the commonweal, that all things may contribute to preserve unity amongst the brethren. No law, no order left; all propriety (property) 'of things taken away and confounded. But of what sort are these sectaries? Of the very vilest and basest sort; and these must make confusion of all state, and so advance themselves in their congregations. This their course, and this their purpose; so the heel would govern the head, and not the head the heel, if these men be allowed.'*

It may well be admitted that, however a few demagogues might feel, the great body of the people entertained no such intentions, and that the hierarchy and ministers of the Crown, to promote their authority, exaggerated every motion of the nonconformists. But, in considering the causes of the influence in the government enjoyed by Elizabeth, it is enough to show that such intentions were ascribed to the sectaries; for if men who had a stake in the country were persuaded that such projects were contemplated, they would naturally rally round the throne, and strengthen the prerogative for their own supposed preservation: and the folly of demagogues was always ready to afford a pretext to the ruling party for their aspersions and rigour. The people, but particularly the lower or lowest ranks, were flattered with the hope of temporal benefits from a change of system: and some clerical writers boasted that they could procure a hundred thousand hands to their petitions; that they were in

* Howel's *State Trials*, vol. i. p. 1263 and 1264. 'One (Mr. Dering) told the queen openly in a sermon, she was like an untamed heifer, that

would not be ruled by God's people, but obstructed His work' (*Life of Hooker*, fol. edit.; see p. 8 *et seq.* in proof of the text).

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reality the strength of the land ; and they declared, even at the moment the Spanish armada threatened the kingdom, that ‘it were no policy to reject their suit at such a time, when the land was invaded.’* The consequence was, that, to recommend themselves to court favour, the episcopal clergy, and even some of the laity, went to the opposite extreme, pretending principles of passive obedience to the prince : and towards the close of this reign, Bancroft, afterwards primate, endeavoured to meet the sectaries on their own ground, by asserting the divine institution of bishops †—doctrine till then unheard of, and contrary to those laws which gave supremacy to the Crown. But, though the higher classes might in general be alarmed, there were many who countenanced the puritans—some out of devotion, not that they would have supported the projects imputed to that body, but that they either disbelieved or despised them ; others, headed by the Earl of Leicester, out of a desire to subvert the hierarchy, that they might have a fresh plunder of the church, not doubting their ability to govern and defraud the party who assisted them in dissolving bishoprics and deaneries. ‡

* Howel's *State Trials*, vol. i. p. 1269. Their abuse of the bishops outraged all decency (Strype's *Life of Whitgift*, p. 208 *et seq.*). We have already shown that these preachers anticipated for themselves, not only all the church livings held by the hierarchy, &c., but the property which had been taken from the religious houses ; and that they meant to thrust the prelates, whom they denominated *rogues* (*Life of Whitgift*, p. 202), out of everything, while they themselves resolved to pay no taxes, as being unlawful.

† Neal, vol. i. p. 494.

‡ *Life of Hooker*, p. 9. The following, taken from a letter by Sir F. Walsingham to a French gentleman, is an account of the principles acted upon towards the puritans :—

‘For the other party, which have been offensive to the state, though

in another degree, which named themselves reformers, and we commonly call puritans, this hath been the proceeding towards them : A great while, when they inveighed against such abuses in the church as pluralities, non-residence, and the like, their zeal was not condemned, only their violence was sometime censured. When they refused the use of some ceremonies and rites as superstitious, they were tolerated with much connivance and gentleness. Yea, when they called in question the superiority of bishops, and pretended to a democracy into the church, yet their propositions were here considered, and by contrary writings debated and discussed. Yet all this while it was perceived that their course was very dangerous, and very popular. As, because papistry was odious, therefore it was

Upon the whole, this reign was not favourable to public liberty. Elizabeth was regarded as the bulwark of the Protestant cause, not in England only, but throughout Christendom; and as, though the last of her race, she could never be prevailed upon to marry, or to name a successor, the prospects of Protestants seemed bounded by her own existence, while the Catholics, considering her the great bar to their ascendancy, were ever busied in plots against her life. Those machinations begot a tender solicitude for so precious an existence, ending in a popularity which was not to be shaken by minor blemishes in administration. The feeling was daily kept alive amongst the ruling party—on the one hand, by the terror of wild innovation, and the imputed designs of the sects to upset the rights of property; on the other, by the conspiracies of Papists, who, after the northern rebellion, the cruelties

ever in their mouths, that they sought to purge the church from the relics of popery; a thing acceptable to the people, who love ever to run from one extreme to another.

‘Because multitude of rogues and poverty was an eye-sore, and a dislike to every man, therefore they put into the people’s head, that if discipline were planted, there should be no vagabonds nor beggars—a thing very plausible. And, in like manner, they promised the people many impossible wonders of their discipline. Besides, they opened to the people a way to government, by their consistory and presbytery—a thing, though in consequence no less prejudicial to the liberties of private men than to the sovereignty of princes, yet, in first show, very popular. Nevertheless, this, except it were in some few that entered into extreme contempt, was borne with, because they pretended in dutiful manner to make propositions, and to leave it to the providence of God and the authority of the magistrate.

‘But now of late years, when there issued from them that affirmed the consent of the magistrate was not to

be attended; when, under pretence of a confession, to avoid slander and imputations, they combined themselves by classes and subscriptions; when they descended into that vile and base means of defacing the government of the church by ridiculous pasquils; when they began to make many subjects in doubt to take oaths, which is one of the fundamental parts of justice in this land, and in all places; when they began both to vaunt of their strength, and number of their partizans and followers, and to use comminations, that their cause would prevail through uproar and violence, then it appeared to be no more zeal, no more conscience, but mere faction and division; and, therefore, though the state were compelled to hold somewhat a harder hand to restrain them than before, yet it was with as great moderation as the peace of the state or church would permit’ (Burnet, vol. iii. pp. 755, 756). The moderation ascribed to the government may be doubted; but the paper is invaluable as throwing light upon the springs of action, and the feelings of the age.

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towards the reformed on the Continent, who were assisted by the English court in their noble struggle for freedom, the massacre of Paris, the different plots in connection with the Scottish queen, and the projected Spanish invasion, were regarded with still greater horror, as monsters not only of impiety, but of every immoral and cruel propensity towards their fellow-beings, as if their creed had not been common to all the ancestors of their condemners, who were consequently involved in the same sentence. This great source of popularity, Elizabeth sedulously cultivated; and no monarch ever seemed better qualified to gain the affections of the multitude. She had, besides, a vast advantage in the general wisdom of her council, who tempered moderation with severity, and knew how far they might safely go in stretches of prerogative. Her policy, too, though not always just, was calculated for success. She, like her predecessors, interfered in elections to parliament; and she gratified leading men by gifts, some of them, it must be confessed, such as patents and monopolies, of a description no less inequitable than pernicious to the rest of the community. The middling and lower classes she conciliated by a more rigid dispensation of justice, in questions with the higher, than had previously been practised; and she both weakened such of the aristocracy as she dreaded, and obliged the lower classes, by rendering the smaller tenants more independent.*

From these sources sprang the great influence of Elizabeth; thence it was that she was permitted, in some cases, to adopt measures not altogether consistent with the liberty of the people, and even on certain occasions to invade the privileges of parliament. Yet the grand principles of the constitution were preserved, however its spirit might occasionally slumber. The greatest blot of her reign arose from the proceedings of the Court of High Commission; but even in these, there are circumstances which distinctly prove that the watchful spirit of

* Scott's *Somers' Tracts*, vol. i. p. 167.

freedom, in regard to stretches of prerogative, was still alive. The proceedings and powers of this court will fall particularly under consideration in the next chapter; and we therefore shall content ourselves with remarking here, that the queen issued, and the clergy and others accepted of, commissions unauthorised by the statute which allowed the erection of the court; that the commissioners, acting upon such illegal powers, tendered, to those who came before them in the character of offenders, the oath *ex officio* to answer interrogatories; and that they granted warrants to pursuivants to ransack houses, as well as fined and imprisoned when they had a right only to inflict ecclesiastical censures. But it illustrates the genius of the age, to state that the executive did not venture to enrol, as ought to have been done, those commissions in chancery, lest their lawfulness should be impugned upon such a publication, which was at least an homage to public opinion; * that not one fine was ever levied during this reign; and that so often as individuals took out prohibitions and appealed to courts of law, they instantly obtained redress by a strict interpretation of the statute which authorised that court. The power to send pursuivants to ransack houses, too, was tried in a memorable way:—A pursuivant having, by virtue of a warrant from the commissioners, attempted to enter a house, was killed by the landlord, and the man was brought before the legal tribunal on a charge of murder. When the prerogative was so much concerned in the result, it is easy to conceive what interest would be made to obtain a judgment against him; but the judges, holding that the commissioners had no right to issue the warrant, concluded that he was justified in killing the pursuivant, and dismissed him from the bar. The true cause of so much severity having been practised, would appear to have been the

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* As this subject is fully discussed in the next chapter, under the head of the Court of High Commission,

I forbear from quoting authorities here, as altogether superfluous.

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ready submission of the prisoners, who purposely did not appeal to the law, from a desire to represent themselves as sufferers for conscience sake, in order to gain popular favour, while they recommended themselves to the queen by showing that, though they could not comply with her commands against those of their Heavenly Master, they would not dispute her power; for, as has been already observed, many of them, while they denounced the English church as antichristian, bastardly, &c., did not decline to hold livings under it, conceiving themselves better entitled to the wages of preaching than 'the dumb-dogs,' such they denominated the conforming clergy (for this and other coarse appellations were early familiar), whom, in the old language of the Papists against the Protestant teachers, they, with some truth, represented as grossly ignorant, as having been shoemakers, tailors, tinkers, millers, &c., and some of them as having been actually burned in the hand for crimes. Perhaps also not a few, who, in the face of the law, had begun to set a-foot their church government by presbyteries, synods, &c., willingly submitted to the censures of the Court of High Commission, lest, though they might stop proceedings there, they should be brought before another tribunal and undergo a smarter punishment.

During this reign, in spite of much impolicy, partly arising from the erroneous opinions of the age, society improved, and many circumstances, which shall be developed in their proper place, prepared the public mind for a more rigid attention to constitutional principles under the Stuarts.

CHAPTER II.

CONTAINING A PARTICULAR ACCOUNT OF THE VARIOUS INSTITUTIONS AND USAGES UNDER THE TUDORS AND THEIR PREDECESSORS, WHICH EITHER WERE PREJUDICIAL TO FREEDOM, OR ARE SUPPOSED TO HAVE BEEN SO; TOGETHER WITH AN EXAMINATION OF MR. HUME'S STATEMENTS IN HIS THIRD APPENDIX, UPON WHICH HE CONCLUDES THAT THE ENGLISH GOVERNMENT UNDER ELIZABETH 'BORE SOME RESEMBLANCE TO THAT OF TURKEY.'

THE various institutions and usages under the Tudors and their predecessors, which were, at a subsequent period, abolished or discontinued, have been so little understood, or so generally misconceived, that, without presenting a particular account of them, and examining the statements of Mr. Hume—which are remarkably plausible, and have made a deep impression on the public mind—we should in vain attempt to convey a correct idea of the views of parties during the stormy period we have selected as the subject of our work; and the discussion of such topics here will save us from the necessity of interrupting the narrative with explanations.

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The Court of Star-Chamber, as holding a conspicuous rank amongst arbitrary institutions, demands our earliest attention.

Court of
Star-
Chamber.

Anterior to the time of the Tudors, there does not occur, either in any publication or record, so much as the mention of any court called the Court of Star-Chamber: and the advocates for its antiquity are obliged to admit that the few instances referred to by them, in proof of its antiquity, passed under the council, as it was then called, or, as we should now denominate it, the privy council. Indeed, Lambard, the first great writer on this subject, states explicitly that the Star-Chamber was no ordinary

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court, but the king's council, which, out of the inherent right and duty of the sovereign to award justice, interposed on great occasions, when the common law either afforded no remedy or an inadequate one, or when one of the parties was too powerful for the usual course of justice. Some of the other writers upon the subject, as Sir Edward Coke and Hudson, appear to affect an obscurity on this point, as if the Court of Star-Chamber were the council, and yet something different from it; but their disingenuousness does not heighten our opinion of the cause they espouse.

It is the province of the privy council to inquire into grand state offences; but it would appear that, in turbulent and barbarous times, the same body who detected the guilt sometimes awarded the punishment; and it might not unfrequently happen that the accused would prefer to purchase his peace by a pecuniary mulct, to undergoing the hazard of a trial. This, however, in unsettled times, might afford the pretext for imposing fines or inflicting other punishments; and it was one of the main objects of the great charter to secure the national rights from such an invasion.

The great charter provides that no man shall be taken or imprisoned, or deprived of his freedom, outlawed, or tried, except by the judgment of his peers or the law of the land. And Lambard admits that the subject understood this as for ever putting a period to the powers of the council;* but he argues, that 'these words ought to be understood of the restitution then made of the ordinary jurisdiction in common controversies, and not for restraint of the absolute authority, serving only in a few rare and singular cases; and therefore,' continues he, 'see what followed: some cases daily creeping out of suits for which no law had been provided, and some misdemeanours also happening from time to time in the distribution of those laws that were already established, it came to pass that

* Lambard's *Arch.* p. 126.

many, finding none other helps for the grief, were enforced to sue to the king's person itself for remedy; and he again, knowing himself to be the chief justice and lieutenant of God within his own realm, thought himself bound to deliver judgment and justice whensoever it should be required at his hands. The which, forasmuch as he could not evenly and with uprightness perform, unless he called the adversary party; neither had he many times, especially in a new and sudden occurrent, any ordinary writ or process whereby to call him, of necessity he was to resort to the kingly and absolute power again, and, by his pur-suivant or letters, to convent him, and then to proceed to the hearing and determining of the cause, as to his princely office did appertain.* He goes on to state, that this was so far from offending the subject for a long time, that an Act was passed in the 28th Edward I. c. 5, providing that the chancellor and justices of the King's Bench should follow the king wheresoever he went—'that he might have always at hand men learned and able to advise him in such cases as he admitted to his hearing;' but that, 'such are the weakness and imperfection of man, the time was not long but the subject which so desirously fled to the king and his council for succour, did as hastily retire and run back to the ordinary seat and judge again.' He then enumerates many statutes to put an end to the judicial powers of the council.†

This mode of reasoning is undoubtedly not philosophical. The object of the great charter was to protect the people against the power of the prince when he attempted to stretch the prerogative beyond the laws, and to prevent any mode of trial except by one's peers or the law of the land; but, according to Lambard, this object was not attained, for in all emergencies, of which the king was the sole judge, the sovereign might, out of his absolute power, determine the matter. What, then, was the security obtained by the great charter? or what absurdity could be

* Lambard, p. 127 *et seq.*

† *Id.* p. 129 *et seq.*

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equal to that of devising laws to control the regal power, and yet allowing the king himself to be the sole judge of the law? Whenever he wished to oppress, he would unquestionably pronounce the case to be an extraordinary one, which demanded his personal interposition, and from his judgment there could be no appeal. Had this been the state of the law, well might Richard II. say that the laws were sometimes in his head, sometimes in his mouth. It is utterly impossible that the great men who extorted the charter from the tyrant that so grossly violated the public rights, should have meant anything so foolish, and this author himself states that the people understood the charter differently; whence the conclusion is, either that they were outwitted, or that the royal power was incapable of limits. But Lambard's allusion to the statute 28th Ed. I. betrays an ignorance of the ancient jurisprudence of the country truly astonishing; and yet he has been followed in it by Hudson,* the writer upon the Star-Chamber so much bepraised by Lord Mansfield. Anciently the King's Bench was ambulatory, following the king's person in his progress through the kingdom. Under Edward I. himself, it actually sat at Roxburgh, upon his conquest of Scotland. The statute alluded to, therefore, had reference to this practice only; and other writers of the greatest authority have so understood it.†

To a writer of such acuteness as Sir Edward Coke, who expressly lays down that all pretence of prerogative against magna charta is taken away,‡ and that the king has committed and distributed all his power of judicature to several courts of justice,§ the reasoning of Lambard

* Hud. in the *Col. Jurid.* p. 12.

† Coke's *4th Inst.* p. 72. Blackst. *Com.* vol. iii. p. 41. By c. 4 of the 28th Edward I. it is provided that 'no Common Pleas shall be from henceforth holden in the Exchequer contrary to the form of the great charter;' and then c. 5 proceeds thus: 'And on the other party the king wills that the chancellor, and

the justices of his bench, shall follow him; so that he may have at all times near unto him some sages of the law, which be able duly to order all such matters as shall come before the court, at all times, when need shall require.'

‡ Coke's *2nd Inst.* p. 36.

§ Coke's *4th Inst.* pp. 70, 71.

must have appeared extremely futile ; and he accordingly assumes a different ground—that the alternative in the great charter, of a trial by one's peers, or the law of the land, was intended to reserve the power of the council or court of Star-Chamber, then an existing and legal court of justice, which administered the laws in a manner peculiar to itself ; and that none of the after-statutes applied to that court, which is not once named in them.* This oracle of the law, however, has not, in this instance, exhibited his usual correctness and research : for the alternative referred, as Dr. Henry has judiciously conjectured, to trials by ordeal, compurgators, &c., all then in use ;† and is clearly established, by the most solemn statutes, to be utterly inconsistent with Coke's idea. But his incorrectness ceases to surprise us when we reflect that he himself sat as a judge in the Star-Chamber, where he lent the authority of his character for legal knowledge to strain the power of that court to the utmost ; and that it was natural for him in his writings to support the proceedings of the judge.‡

As some trials which affected the life of the party might take place by ordeal, so those which struck at the patrimony and liberty of the subject were cognizable only by juries. The incorrectness of Coke is proved—1st, by 3rd Edward I. c. 6, which provides that no city, borough, nor town, nor any man, shall be amerced without reasonable cause, &c., *and that by his or their peers* ; 2nd, by magna charta, as confirmed by the same prince in the 25th of his reign, which provides that no freeman shall be amerced except by the oath of twelve honest and law-

* Coke's 4th Inst. c. 5.

† Henry, vol. vi. p. 80. The idea, however, was not peculiar to Coke or Hudson, but had been announced publicly in the Star-Chamber by Lord-Keeper Egerton (see Hudson, p. 4).

‡ Sir Edward Coke and Lord Howard, attended with the king's

counsel, Sir Francis Bacon and Sir Henry Yelverton, in the case of the Earl of Northumberland and Sir Stephen Proctor, published in open court that the statute 3rd Henry VII. extended not any way to this court (Hud. p. 10.) But Coke takes a different view in the Inst.

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ful men of the vicinity, or if a peer, by his peers; and that no freeman shall be taken and imprisoned except by a trial of his peers, or by the law of the land. The various enactments to define the admirals', stewards', constables', and marshals' powers—which, as we shall afterwards see, were very limited—likewise fully bespeak the rigid attention of our ancestors to national rights.

Those positive enactments of the legislature did not, in semi-barbarous and unsettled times, so completely restrain the power of the council as to prevent it from occasionally transgressing its boundaries, by arrogating judicial powers; but the instances are rare,* and fresh laws were immediately devised to arrest such an encroachment upon public rights. The fact is, that the benefit of the laws was enjoyed by a small portion only of the people; that the great aristocracy so overawed and threatened, or suborned judges and juries, as to be above ordinary jurisdiction; that, by every act of violence, they left no alternative to the oppressed but to fly for succour to the Throne; and

* Sir Edward Coke says: 'This court in ancient times sat but rarely, for three causes: First, for that enormous and exorbitant causes which this court dealt withal only in those days rarely fell out.' That is strange, for if we look even to the statutes, particularly 2nd Richard II. c. 6, we shall discover ample proofs of disorders apparently inconsistent with the very being of society.—'Secondly, this court dealt not with such causes as other courts of ordinary justice might condignly punish, *ne dignitas hujus curie vilesceret*.' Query, What is condign punishment but what the law ordains? and were not all offences punishable at common law?—'Thirdly, it very rarely did sit, lest it should draw the king's privy council from matters of state, *pro bono publico*, to hear private causes, and the principal judges from *their ordinary courts of justice*' (4th Inst. c. v. p. 61). This last is a most extra-

ordinary reason, since statute was passed after statute to prevent the illegal interference of the council with ordinary justice, and since, in the same chapter, we are told that, in the author's time, it sat on Wednesdays and Fridays regularly during term time. Men in ancient times must have been differently constituted from what they were in this author's days, or are now, if they neglected to avail themselves of an arbitrary institution. But the repeated complaints of, and statutes against, the council, prove that human nature has undergone no change, though, were my Lord Coke's view correct, there would be this inconceivable anomaly, that the council, while it was above taking advantage of its legal rights, exercised its power in a different way—a way that did not promote its authority, while it provoked animadversions: for it could have done all in the one way that it could desire in the other.

that the king, anxious to advance the prerogative, as well as to preserve the public peace, took advantage of disorders to call the violators of the laws before him in council. This, by affecting the great men themselves, induced them instantly to repress it; and the zeal of the Lower House on that head may probably, with some truth, be partly ascribed to its aristocratic constitution; for, though the great body of the people were sufficiently poor and unprotected, it does not follow that the great gentry who were returned to parliament were not in a very different condition. In the 5th Edward III. it was enacted, 'That no man from thenceforth should be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels seized into the king's hands, against the form of the great charter and law of the land.' In the 15th, a complaint was again made in parliament against this violation of the great charter; and in the 25th the following law was passed (stat. v. c. 4):—'Whereas it is contained in the great charter of the franchises of England, that none shall be imprisoned, nor put out of his freehold, nor of his franchises, nor free custom, unless it be by the law of the land; it is accorded, assented, and established, that from henceforth none shall be taken by petition, or suggestion made to our lord the king, or to his council, unless it be by indictment, or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; nor that none be put out of his franchises, nor of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of law; and if anything be done against the same, it shall be holden for none.' Still the evil continued; and by the 28th of the same reign, the great charter was confirmed, and it was particularly provided, c. 3, 'that no man, of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor

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put to death, without being brought into answer by due process of the law.' These suggestions had been still continued, and therefore, by 37, c. 18, of the same king, the following provision was made: 'Though that it be contained in the great charter, that no man be taken, nor imprisoned, nor put out of his freehold, without process of the law; nevertheless divers people make false suggestions to the king himself, as well for malice as otherwise, whereof the king is often grieved, and divers of the realm put in great danger and loss against the form of the same charter; wherefore it is ordained, that all they that make such suggestions shall be sent with the same suggestions before the chancellor, treasurer, and his grand council, and that they there find security to pursue their suggestions, and incur the same pains that the other should have had if he were attainted, in case that his suggestions be found evil; and that then process of the law be made against them without being taken and imprisoned, against the form of the said charter and other statutes.' The 38th of the same king, c. 9, so far alters this as to substitute damages to the aggrieved, and a fine to government, for the *lex talionis*. But the statute 42nd, c. 3, of the same reign, is still more precise: 'At the request of the Commons, by their petitions put forth in this parliament, to eschew the mischiefs and damages done to diverse of his Commons by false accusers, which oftentimes have made their accusations more for revenge and singular benefit than for the profit of the king or of his people, which accused persons, *some have been taken and sometimes caused to come before the king's council by writ, and otherwise, upon grievous pain against the law*: it is assented and accorded, for the good governance of the Commons, that no man be put to answer without presentment before the justices, or matter of record, or by due process and writ original, according to the old law of the land; and if anything henceforth be done to the contrary, it shall be void in law, and holden for error.' In spite of these

laws, the evil recurred; and, therefore, in the 1st of Richard II. it was provided, 'that no suit should be ended before any lords, or others of the council, but before the justices only.' In the 2nd of that reign, however, upon another petition from the Commons in parliament against the council, it was answered from the Throne, that the king thought it improper that he should be restrained to send for his lieges upon a reasonable cause, though he did not mean that they should answer finally about their freehold, but should be remanded for trial as the law required; 'provided always that, at the suit of the parties, where the king and his council shall be credibly informed that, because of maintenances, oppressions, or other outrages of any persons in the country, the common law cannot have her course—in such case the council may send for the party upon whom the complaint is made, to make his answer for his contempt; and furthermore, by their good discretion, to compel him to find sureties by oath or in other manner for his good behaviour, and that he shall not, by himself or by any other, commit maintenance, or other thing which may disturb the course of the common law.'* This affords a melancholy picture of the times; but it clearly evinces that all parties were agreed that the interposition of the council was irregular, and only justified by the principle of necessity; since, had it been an ordinary court of justice, such language could never have been used. An evasive answer was, in the 13th, returned by Richard to a petition of the Commons to the same purpose; but in the 16th they carried their point, for it was then enacted that no man should be forced to appear before any lords of the council. Yet, such were the turbulence and barbarism of the times, that, in the 4th of the next reign, the Commons were obliged to petition against *all letters of privy seal, &c.* by which the subject was summoned before the council,

* Lambard, p. 147 *et seq.* (see also Cott. *Abridg. of the Records*— but it is not so fully stated there—vol. i. p. 178).

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and they referred to the statutes of Edward III. Henry answered that he would charge his officers to abstain more than formerly from sending for his subjects in this manner; but that it was, nevertheless, not his intention to prevent his officers from sending for his subjects in matters and causes necessary, according to the practice of his predecessors. His son likewise asserted the same power.* But, though such a practice was struggled for on great and crying emergencies, it does not follow that the council possessed judicial powers; and these responses show upon what principle the monarch acted, while it ought not to be forgotten that Richard II. was dethroned for tyranny, and that both Henry IV. and his successor, having been seated on the throne contrary to the usual course of succession, and being exposed on that account, particularly Henry IV., to insurrections for the re-establishment of the lineal descendant of the Crown, found it necessary to resort to this course for their own security.

But it is alleged that the judicial powers of the council are proved by statutes which authorise its interposition in certain cases. Thus, by the 12th Richard II. c. 11, *scandalum magnatum*, which had been complained of, and was, according to statute 3rd Edward I. and 2nd Richard II., cognizable by the common courts of justice, is made punishable by the council, *notwithstanding those*

* Lambard, p. 149 *et seq.* Cotton's *Abridg. of Records*, p. 348. There was first printed in Hawkins's edition of the *Statutes* what is denominated a statute by Richard II., in the thirteenth of his reign, and printed as such in the edition of the *Statutes of the Realm*, published by command of Geo. III. in pursuance of an address of the House of Commons (vol. ii. p. 74), whereby maintenance is prohibited 'upon pain of imprisonment, fine, and ransom, or of being punished in other manner, according as shall be advised by us and our council.' This, how-

ever, is no statute, but merely a writ addressed to the sheriff of Kent by the king and his council, and it is said that 'like writs are directed to the several sheriffs throughout England.' It ought not therefore to have been printed amongst the *Statutes*; and in fact only proves the disorderly state of society, and the existence of the irregularity practised by the council, of which the Commons complained this very year, and which they got redressed in the sixteenth of that reign, or three years afterwards.

statutes which are specially referred to. Thus, by 13th Henry IV. c. 7, it was ordained that, in the event of any riot, assembly, or rout of the people against the law, the justices of the peace, three or two of them at the least, and the sheriff or under-sheriff of the county where it occurred, should arrest the offenders, and have power to record what they found done in their presence against the law ; which record should be the ground of conviction, in the same manner and form as is contained in the statute of forcible entries ; but that, in the event of the offenders having departed before the arrival of the sheriffs and justices, these magistrates should diligently inquire within a month after the riot, &c., and should hear and determine according to the law of the land ; ‘ and if the truth could not be found in the manner as is aforesaid, then, within a month next following, the justices, three or two of them, and the sheriff or under-sheriff, should certify before the king and his council all the deed and circumstance thereof, which certificate should be of like force as the presentment of twelve : upon which certificate the said trespassers or offenders should be put to answer, and they which should be found guilty should be punished according to the discretion of the king and his council ; *and if such trespassers or offenders did traverse the matter so certified, the same certificate and traverse should be sent into the King’s Bench, there to be tried and determined as the law required.*’ The 31st Henry VI. c. 2, which is particularly referred to by Sir Edward Coke, sets forth that the king, ‘ upon certain suggestions and complaints made, as well to him as to the lords of his council, upon divers persons, of great riots, extortions, oppressions, and grievous offences against the peace and laws, had given command, as well by writs under his great seal as by his letters of privy seal, to appear before him in his chancery, or before him and his council, at certain days in the same writs and letters contained, to answer to the premises ; which commandments were, and many times had been, disobeyed in

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contempt of the king, and hindrance, damage, &c. of his said complainants :’ power is therefore given to the chancellor to issue proclamations against those who refuse to appear before the council, and certain punishments are ordained, ‘*provided that no matter determinable by the law of this realm shall be by the same Act determined in other form than after the course of the same law in the king’s courts having determination of the same law.*’ But the statute is limited to seven years’ endurance. The reader may perhaps hesitate in admitting the assumption, upon these statutes, by the advocates for the antiquity of the Court of Star-Chamber. As to the first, the very circumstance of its being particularly mentioned that the power of punishing *scandalum magnatum* was given to the council, notwithstanding the previous statutes on the subject, implies that this was an unusual course ; and what is quite decisive is, that by the 17th of the same king, c. 6, the power of punishing this offence is committed to the chancellor. Now, upon the same principle that an inference is drawn from the one in favour of the ordinary judicial authority of the council, a similar deduction must be made from the other for the ordinary criminal jurisdiction of the Court of Chancery ; but surely no one will be hardy enough to contend for that. With regard to the statute 13th Henry IV. c. 7, the very fact of the accused having it in his power to traverse and carry the case before the King’s Bench, ‘there to be tried and determined as the law required,’ fully imports that the jurisdiction thus given to the council—a jurisdiction which it was left to the option of the accused to decline—was inconsistent with the usual dispensation of justice, while it affords additional evidence against the view taken by Lambard about the paramount right of the Crown to interpose its inherent judicial authority when the occasion seemed to demand it. The same conclusion arises from the temporary and guarded nature of the Act 31st Henry VI. c. 2. It is indeed stated in the preamble, that men had been guilty of con-

tempt in disregarding writs for their attendance in chancery or in the council; but it is evident, from the scrupulous limitations of the statute, that however parliament might blame resistance of usurped authority for the past, they were resolved to secure themselves against it for the future; and were any inference deducible from the preamble in favour of the ordinary jurisdiction of the council, the same conclusion could not be denied for the ordinary criminal jurisdiction of the chancellor, before whom, it is said, the accused had been also summoned, and whose name, indeed, is first mentioned. In considering an Act of this kind, we must always attend to the peculiar situation of public affairs at its date. The kingdom was then rent with faction, and the laws had, under an imbecile monarch, an ambitious consort, and wicked favourites, lost their vigour; Jack Cade's rebellion had just been suppressed; and Richard Duke of York had already appeared in arms, and though he had as yet submitted, it was only to muster greater strength to support his pretensions. Under such circumstances, the legislature might not feel averse to arm the executive with unusual power, and to confirm its authority by a general censure of the contempt with which some of its proceedings had been treated; while it is not unlikely that parliament itself, convulsed with the party spirit and sinister views that generally precede a civil war, proposed the advancement of their own objects in a law that gave power to such as should be placed at the helm of affairs during the approaching contest.

The reasoning of Sir Edward Coke, upon the statutes formerly quoted against the council, is notable, that 'neither they nor any other taketh away the jurisdiction of any settled court of justice, neither is the Court of Star-Chamber named in any of them, and yet was it a court then and before that time.'* This seems to import that the venerable author conceived that the council was something different from the Court of Star-Chamber, and

* *4th Inst.* p. 63.

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yet there is not the most distant allusion to such a court, in any statute whatever, anterior to the time of the Tudors; and he himself refers to the statutes just quoted in proof of its existence, while the council only is named in them. In citing his cases, too, he mentions that the record bears, that they were either *coram rege et concilio*, or *coram rege et concilio in camera stellata*; nay, in regard to the chamber, he states that originally the word camera only was used, and that the true designation of the Star-Chamber is *coram rege et concilio*, as that of the King's Bench is *coram rege*, and of Chancery, *coram domino rege in Cancellaria*.^{*}—The Star-Chamber was not only the usual place of meeting for the council in its deliberations upon public affairs, but for the Lords when summoned to advise the king on any extraordinary emergency, and for committees of parliament.[†] Had there been any court of law held in that chamber, the style, to correspond with that of the others, would have been *coram rege in camera stellata*, instead of *coram rege et concilio*: as obscurity was studied when it did become a court, in order to draw a veil over its usurpations, a proper title was never given.

The author whose cases in support of the antiquity of the Court of Star-Chamber are most numerous, and are entitled to the greatest respect, is Sir Edward Coke; but though his list, from its size as well as from the weight of his legal character, appears formidable at a distance, its importance vanishes on a nearer inspection—and we may remark that, on this point, his work is destitute alike of the liberal spirit and the correct good sense which distinguish it in other respects; but the inconsistency arose from his having sat in that arbitrary court as a judge. That cases did occur before the council is demonstrable from the various statutes which were from time to time devised to put a stop to such an encroachment upon the privileges of the people; but it would be strange indeed to argue

^{*} See 4 *Inst.* c. 5.

[†] Lambard, p. 175. Prynne's *Animadver. upon the Fourth Inst.* The *Epilog.*

from thence, in the face of repeated acts of the legislature, which stigmatize such proceedings as an infringement upon public rights, that the council was a legal tribunal; while it is evident from the two last statutes quoted above that a certain species of jurisdiction, on particular occasions, was given by the first of the two to the council, and likewise a temporary and limited power by the last. Its interposition on particular occasions, therefore, under these acts, was lawful; and the wonder consequently is, that there should have been any difficulty in discovering instances of its usurped, limited, or temporary power, while it must create astonishment to learn that, out of fifteen cases quoted by the oracle of English law,* nine are misrepresented, or quite inapplicable to the question. Of the two first cases quoted by him, Prynne could not discover a trace in the records referred to.† The third, he (Prynne) found had been decided in Chancery,‡ the proper court for the cognizance of the question. The fourth was a case in parliament, which at that time frequently took cognizance of private causes.§ The fifth appears also to have been agitated before parliament. The eighth, which the venerable author quotes as the most irrefragable, announcing that Lord Dier had reported it under his own hand in the 1st of Elizabeth, when he thought it necessary to vindicate by authority the legality of the court, Prynne proves, by the production of the record, not to have had the most distant relation to the Star-Chamber, and to be in all respects misrepresented.|| The ninth appears from Lambard to be also not in point. It regards the Duke of York, in the 35th Henry VI., who, according to Lambard, had been cited upon the statute 31st Henry VI., about riots; but the writ was annulled,

* See 4th Inst. c. 5.

† Prynne's *Animad. Epil.* p. 417.

‡ *Id.* p. 418.

§ *Id.* p. 417. He refers to Ryley's *Plac. Par.* to prove that private causes were often submitted to parliament;

and the same is obvious from the stat. 46 Edw. III. to exclude lawyers on that account.

|| Prynne's *Animad. on 4th Inst.* p. 419.

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because, though it was issued on that statute, it contained nothing about riots.* The eleventh case was decided in parliament.† The twelfth, as it is reported to have occurred on November 21, in the 32nd Henry VI., might, and, if it really were a case of jurisdiction, in all probability must, have taken place under the temporary statute which was quoted above, about riots, &c., which had only been passed in the preceding year. But there is reason to believe that the case has been altogether mistaken. Lord Coke gives it in these words:—‘An order *in* the Star-Chamber for the Duke of York’s council to have access to him, because called *into* the chamber by privy seal.’ Now, it will be recollected that the Duke of York had already been in arms, but that, having submitted for a season, he had retired to his country-seat, where he continued till the birth of Prince Edward, which seemed to blast the duke’s hopes of quietly succeeding to the throne, and taught him the necessity of exertion; and the immediate illness of Henry, with the general odium of the government, which vented itself in slandering the queen with her favourite Somerset, by pointing out this as the proper time, at once roused the duke and his adherents into activity; and that he was instantly admitted into the council, where, having become supreme, he was soon made protector of the realm, while Somerset was, on various charges, sent to the Tower.‡ The prince was born on October 13; and there is extant a commission under the great seal, dated the 14th of February following, by which the duke was empowered to hold a parliament.§ The order in the Star-Chamber, however, is dated on November 21,|| and it is utterly inconceivable upon what ground the individual who was in February supreme, was

* See Lambard, p. 180.

† Prynne, p. 419.

‡ Hume, vol. iii. p. 197 *et seq.*; Henry, vol. ix. p. 144 *et seq.*

§ All authorities agree as to the date of Prince Edward’s birth; and

the commission to the Duke of York is extant in Rym. *Fœd.* vol. xi. p. 344.

|| Lambard, p. 179, distinctly states this, though Coke does not give the month.

called *before* the Star-Chamber, Sir Edward says *into*,* which points at the truth, as a criminal at so late a period. Even after he had been in arms, the privy council, instead of venturing to examine him relative to his rebellion, had advised the king to summon a great council of the peers to hear his and Somerset's mutual accusations.† We are told by historians that he lived in retirement from that time, till he forced himself into the council, and, if he had been molested, some account of this event at such a crisis must have been handed down to us: but if he had been cited as a criminal on the last occasion, why should he have needed to apply for liberty to his counsel to have access to him? He could not be in confinement on any charge cognizable by the council, unless he were attached of high treason, and merely examined by it; and were that the case, it would afford no colour for presuming that it arrogated judicial powers, since such an examination would fall within its province at this day. The fact would appear to be, that the duke had been called into the council as a member, and as the leading one too; but that, being a very prudent, moderate, and cautious man, he chose either to be, or to have the appearance of being, directed by legal advice in his present very critical situation—particularly in regard to the impeachment of Somerset—well knowing that, on any reverse of fortune, every circumstance would be taken advantage of as a pretext for his destruction.

Thus are swept off at once nine out of Lord Coke's fifteen cases; and we may observe that some of these had been cited by Lambard, while Hudson, who talks of the records with peculiar confidence‡—though from his mis-

* Lambard says *before* the council (p. 179).

† Halle, f. 31; Holin. p. 639; Henry, vol. ix. p. 145.

‡ He says it is 'a doating which no man who had looked upon the records would have lighted upon'—to impute the origin of the court to

the statute 3 Henry VII. Why?—'it being solemnly adjudged by the chief judges of England, Sir E. Coke, and the Lord Howard, in the cause betwixt the Earl of Northumberland and Sir Stephen Proctor, and published in open court, that the statute 3 Henry VII. extended not any

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takes, and his not referring to any rolls, it may be doubted whether he had ever consulted them—quotes the same cases with all the errors of the other authors.* The same writer tells us that Henry VII., anterior to statute 3rd of his reign—which, as we shall see, afforded a pretext for the institution—frequently presided in person in the Star-Chamber; but this does not tend to advance our opinion of its being a legal court, since it has been held by the earliest writers that the king has committed and distributed his whole power of judicature to several courts of justice;† and we are quickly relieved of any difficulty that might arise from Hudson's statement, by being apprised of the nature of the questions which were agitated before that monarch, 'as of the intercourse of Burgundy, the marriage of Prince Arthur, and the like,'‡ all matter fit only for the cognizance of the privy council and not of any court of law; and yet this author, with the same perversity, elsewhere, again quotes these and similar cases in proof of the jurisdiction of such a court.§ It is indeed said, in general terms, that many cases about the titles of land were likewise determined there; but no instances are given, and even the advocates for the court admit that such questions could not legally be decided before that tribunal. It is not improbable, however, that cases regarding the titles of land were frequently discussed before that monarch, though the fact will not warrant

way to this court.' This is logic; but Sir E. Coke was not himself convinced by it: for he tells us that the statute confirmed the jurisdiction of the court (*4th Inst.* c. 5). The judgment founded on by Hudson did not even satisfy the king's council; for there is in Rymer a note of all causes cognizable by the Star-Chamber, as drawn up in the first of Charles I. by authority, in which its jurisdiction appears to be ascribed to the statute (*Rym. Fœd.* v. 18, p. 192).

* See Hud. p. 12 *et seq.* for a proof

of his having just quoted the cases referred to by others, &c.

† 4 *Inst.* p. 70. The author proves this from Bracton and Britton; and yet Hudson as well as Lambard quotes these authors to show that the king had reserved the dispensation of justice to himself, not marking the difference between the theory of the sovereign being the fountain of justice and the way in which his judicial powers are exercised.

‡ Hud. p. 16.

§ Hud. p. 52. See also *Harl. Man.* Brit. Mus. No. 736.

any inference in regard to the Court of Star-Chamber. His followers, who had been previously ejected from their possessions, reclaimed them, and forfeitures against the opposite faction were now numerous in turn. It is scarcely to be doubted, therefore, that the council would be filled with petitioners, whether sufferers under the new dynasty, or claimants of old rights and suitors for new grants. But Henry had too much good sense to affect the exercise of the judicial powers in his own person ; and, even with regard to this arbitrary court, though Hudson tells us that, when the sovereign was present, the council merely delivered their opinions, reserving the right of judgment to their master, there is no instance of such a thing except that of James I., whose pedantic pretensions led him to such an absurd proceeding in the case of the Countess of Exeter against Sir Thomas Lake.*

We shall conclude this branch of the subject with remarking, that nothing more effectually shows the badness of the cause than the extraordinary keenness of its advocates, and the lameness and absurdity of the evidence adduced by them ; and that, had such a court existed, Sir John Fortescue, in his excellent works, could not have failed to allude to it, especially as he particularly mentions the conviction by attaint of corrupt jurors, for whose correction the court was afterwards alleged to be most necessary. As an excuse for the paucity of their cases on this subject, writers state that the court sat very rarely. Were this correct, a higher compliment could not be paid to the moderation of the different monarchs. But the *Statutes* prove that they illegally used the council ; and it is inexplicable, upon such an assumption, how they should have obstinately employed it in one shape, when they

* Hudson, pp. 8 and 9. This author says that his 'most excellent majesty, with more than Solomon's wisdom, heard the cause for five days, and pronounced a sentence more accurately eloquent, judiciously grave, and honourably just, to the

satisfaction of all hearers, and of all the lovers of justice, than all the records extant in this kingdom can declare to have been, at any former time, done by any of his royal progenitors' (p. 9).

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could have lawfully accomplished their object in another, which they yet neglected.

We shall now consider the statute 3 Henry VII. c. 1. It proceeds upon the preamble, that ‘the king, &c. remembereth how, by unlawful maintenances, giving of liveries, signs and tokens, and retainders by indentures, promises, oaths, writings, or otherwise embraceries of his subjects, untrue demeanings of sheriffs in making of panels, and other untrue returns, by taking of money by juries, by great riots and unlawful assemblies, the policy and good rule of this realm is almost subdued,’ &c. It is therefore ‘ordained, that the chancellor, and treasurer, and the keeper of the privy seal, or two of them, calling to them a bishop and a temporal lord of the privy council, and the chief justices of the King’s Bench and Common Pleas, or other two justices in their absence, &c., should have authority to call before them by writ or by privy seal, the said misdoers, and them and others by their discretion, to whom the truth may be known, to examine, and such as they find therein defective, to punish them after their demerits, *after the form and effects of statutes thereof made, in like manner and form as they should and ought to be punished if they were thereof convict after due order of law.*’ No unprejudiced mind can attend to this statute without being satisfied that it erected a new court. It does not allude to any previous one; it does not embrace the council; and yet it is alleged by Sir Edward Coke that it was declaratory of proceedings in the ancient court—that is, the council—and confirmed its jurisdiction. All the offences enumerated were punishable by previous statutes; and the ordinary course of justice only was now departed from. If the council had previously possessed such powers, there would have been no occasion for the act; and, at all events, the ancient court must have been alluded to as an existing tribunal. Instead, however, of that, the privy council is mentioned without an insinuation of such an inherent power. But the inconsistencies com-

mitted on this subject are extraordinary. Sir Edward Coke, with two other judges, had decided that this statute did not refer to the Star-Chamber at all, which was independent of it, any more than it did to the other ordinary courts, yet he takes a different view in his writings;* while Hudson, who thought a judgment irrefragable evidence on the subject, follows the decision as indisputable, and censures Lord Bacon, because, in common with other authorities, he ascribed the institution partly to the statute.† However posterity might mistake this Act of Parliament, the framers of it could not; and a judgment was pronounced on it, only five years after its date, in consequence of an attempt in that court, which was defeated, to augment the number of the judges.‡ But, says Lord Coke, ‘the sudden opinion in 8 Henry VII. and of others’ (he quotes the great lawyer Plowden’s *Com.* in the margin), ‘not observing the distinction between acts declaratory of proceedings in an ancient court, and acts introductory of a new law in raising of a new court, is both contrary to law and continual experience.’§ Surely this venerable judge had here forgotten his own maxim: *Contemporanea expositio est fortissima in lege.*

The court thus erected by the statute 3 Henry VII. soon fell into desuetude, a proof of its not having been consentaneous to the jurisprudence of England or the feelings of the people; but Cardinal Wolsey, during his chancellorship, took advantage of the pretext afforded by the statute to raise what was thought by some to be an entirely new institution, and which bore little resemblance to that described by the Act of Parliament. Sir Thomas Smith, who enjoyed the office of secretary of state both under Edward VI. and Elizabeth, informs us that the court ‘took augmentation and authority at the time that Cardinal Wolsey was chancellor of England, who of some was thought to have first devised that court, because

* Hud. p. 10, 4 *Inst.* c. 5.

† *Id.* p. 50.

‡ Plowd. *Com.* p. 393.

§ 4 *Inst.* c. 5.

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that he, after some intermission, by negligence of time, augmented the authority of it.' 'The measure,' continues he, 'was marvellous necessary to repress the insolence of the noblemen and gentlemen of the north parts of England, who, being far from the king and the seat of justice, made almost, as it were, an ordinary war amongst themselves, and made their force their law, banding themselves with their tenants and servants to do or revenge injury one against another as they listed.*' The success of the institution in this instance brought it into repute; for, as the power and influence of the aristocracy set them, in a great measure, above ordinary jurisdiction, a court which seemed calculated to repress their insolence and violence came peculiarly recommended to the lower ranks of society. But, though it be the interest of monarchs, in the general case, to limit the power of the aristocracy, yet, where the influence of that body is great, and their residence near court common, every arbitrary institution becomes an engine in their hands against the rest of the people; and the Star-Chamber, which at the outset promised benefit to the lower classes, was at no distant period justly complained of as tyrannical.

One of the main arguments for the antiquity of the Court of Star-Chamber is, that there must have existed somewhere a power to punish corrupt juries, and that one jury would seldom attain another: for a long time, however, it seldom ventured to punish juries, though it affected the right. Sir Thomas Smith tells us that, though juries were many times commanded to appear before that court, the matter was commonly passed over with a rebuke; and he specifies only two cases where juries had been fined. 'But,' says he, 'those doings were *even then*

* Smith's *Commonwealth of England*, b. iii. c. 3. It is said by some writers that Henry VIII. began with the use of the Court of Star-Chamber, and that it was there Empson was first blasted; but this seems a mistake. Petitions were presented

to the council from all quarters against him and Dudley; and the council having examined the charges against them, which it would do at this day, committed them for trial (Howel's *State Trials*, vol. i.).

of many accounted very violent, tyrannical, and contrary to the liberty and custom of the realme of England.* The law had provided a remedy against corrupt juries in the attain, for which various statutes† were devised : it follows, therefore, that, since no mention is made of a power to punish in the council, and as Sir John Fortescue, while he speaks of the attain,‡ never gives a hint of any power to try or punish a jury except in that way, the council was either not deemed requisite for that object, or did not attempt to interfere. The interposition of the Star-Chamber, too, was soon productive of baneful consequences.§

When this pernicious court was first established by Wolsey, it proceeded with great caution. *The president of the king's council* was added by stat. 21 Henry VIII. c. 20, to the number of the judges—a clear proof that, even at this late period, it was conceived to be quite distinct from the council ; and by certain Acts of Parliament, both in that reign and in Elizabeth's, some particular kinds of cases were committed to its jurisdiction. But it in no long time assumed a bolder tone, till it even disowned its origin. The whole privy council arrogated the right of sitting there in judgment ; and the question was no longer what the statutes allowed, but what the council in former times had done. Having once adopted the principle of precedent, it no longer submitted to any check upon its proceedings. Every act of the council in the worst times was raked up, though so many statutes were devised against such proceedings ; cases were grossly misrepresented ; strained analogies were resorted to ; and where no shadow of a precedent could be discovered, ingenuity could invent—a proceeding the more simple, as no

* *Commonwealth of England*, b. iii. c. 1. Sir Thomas says that this happened in a previous reign ; and we may presume that, as he wrote in Elizabeth's time, it was Queen Mary's, and that one of the cases

related to the jury who acquitted Sir N. Throckmorton.

† See *Statutes*.

‡ *De Laud. Leg. Ang.* c. 20.

§ Harrison, p. 155.

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regular record was kept ; * while every abominable recent case was held to be conclusive in all future ones. Where no precedent could be discovered or invented, then the paramount, uncontrollable power of a court, in which the monarch might preside in person as sole judge (for, having held it to be the same as the council, they next assumed that principle), was entitled to provide a remedy for any alleged disorder. The judges of this court, too, neglected no means for advancing so arbitrary an institution. Under the pretext of desiring to be directed by the best legal advice, they usurped the power of nominating the counsel who should plead before them †—a practice that operated to the exclusion of every man who had honesty and independence enough to assert the rights of his client. The great Plowden fell under their severe animadversion for reminding them of the stat. 3 Henry VII. ; and Serjeant Richardson, about thirty years afterwards, incurred a censure for a demurrer to the same effect. ‡ The consequences may, therefore, be easily figured : every precedent begot a worse ; and, towards the close of Elizabeth's reign, though the Star-Chamber

* Hudson tells us that in later times the records were quite neglected, 'for that some great men have delivered their opinions that it was no matter whether any pleading remained or not after the cause heard, because the judgment cannot be reversed by error ; and causes have, upon deliberation, been ordered to proceed to hearing upon copies, the originals being withdrawn by neglect, and no care being taken to have them engrossed *de novo*, and orderly filed ; so also the very sentence by which severe punishments have been executed upon offenders, have by mere neglect been wholly left unentered, so that there is no record to justify the inflicting of that punishment' (p. 6). He pretends that, in former times, they were regularly kept, but it is evident that he had not inspected any-

thing of the kind (*Harl. MS. Brit. Mus. No. 730, No. 5*, gives the same account of the records).

† Hudson, p. 26.

‡ Hudson, p. 51. *Harl. MS. 1200*. In the *Hargr. MS.* in the *Brit. Mus.* there is, in No. 216, at p. 195, a treatise about the Star-Chamber ; but though the writer strains to make it appear that it was an ancient court, he cites cases fit for the cognizance of the privy council, not of a court of law ; and he candidly states that a question occurred in Elizabeth's reign, while Sir N. Bacon was keeper of the great seal, about jurisdiction, between the Star-Chamber and the Queen's Bench, in a case of perjury, &c., and that, after much learned discussion, the judges could not carry back the court further than 3 Henry VII.

still retained some decency, it had reached a monstrous height. But under the Stuarts it threatened a general overthrow of popular rights, and the engrossment of all ordinary jurisdiction. While, too, the people groaned under such an evil, there were not wanting writers who were ready to vindicate its worst measures, and absolutely triumph at every instance of usurped power, as reflecting a proper reproof upon the factious for complaining against so necessary and eminent a court. Hudson says of it: 'In fame, it matcheth with the highest that ever was in the world; in justice, it is, and hath been, ever free from suspicion of injury and corruption; in the execution of justice, it is the true servant of the commonwealth; and whatever it takes in hand to reform, it bringeth to perfection.*' Even Sir Edward Coke himself was so enamoured of this court, probably from a pleasing recollection of the consequence he had enjoyed there, that he pronounced it 'the most honourable court in the Christian world, the parliament excepted, both in respect of the judges and of their honourable proceeding, according to their just jurisdiction and the ancient and just orders of the court.' He then describes the judges in high terms, and concludes—'This court, the right institution and ancient orders thereof being observed, doth keep all England in quiet.'†

* Hudson, p. 22. This author hopes that the point about the antiquity of the court is so settled, 'that it never will be a question in future times' (p. 51).

† 4 *Inst.* p. 65. Mr. Tait, in his *Treatise of the Star-Chamber*, though he, nearly in the words of Lambard, speaks of an inherent power in the king to call before him offenders who cannot be punished by the ordinary courts, ascribes the ordinary jurisdiction of the Star-Chamber to 3 Henry VII., and says that it was generally understood that magna charta secured the people from the council (see a *Collection of Dis-*

courses of Antiquity, by Hearne, vol. ii. pp. 279–300). Camden also tells us that, though this court was very ancient, its authority was so confirmed by the 3 Henry VII. that some ascribed its origin to it (*Britan.* vol. i. p. 84. See also generally upon this subject, Compton's *Jurisdict. of Courts*, art. Star-Chamber). Rushworth has also given an account of the Court of Star-Chamber, 'being the abstract of a treatise written by a person well acquainted with proceedings of the same;' in which, after mentioning that Sir Thomas Smith and Lambard are the first writers upon the subject, he says:

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Mr. Hume gives an account of this court in the following words:—‘One of the most ancient and most established instruments of power was the Court of Star-Chamber, which possessed an unlimited discretionary authority of fining, imprisoning, and inflicting corporal punishment, and whose jurisdiction extended to all sorts of offences, contempts, and disorders, that lay not within the reach of the common law. The members of this court consisted of the privy council and the judges—men who, all of them, enjoyed their offices during pleasure; and when the prince himself was present, he was sole judge, and all the others interposed only with their advice. There needed but this one court in any government to put an end to all regular, legal, and exact plans of liberty; for who durst set himself in opposition to the Crown and ministry, or aspire to the character of being a patron of freedom, while exposed to so arbitrary a jurisdiction? I much question whether any of the absolute monarchies in Europe contain at present so illegal and despotic a tribunal.’* The erroneousness of this view, in regard to the antiquity and power of the court, must be sufficiently clear from what we have already said upon the subject; but we may remark, in respect to its constitution—first, that it is not correct to say that the judges of the land, who were entitled to sit there, held their offices during pleasure, as it was reserved for Charles I., in whose vindication the learned historian so eagerly makes the state-

‘And the reason, probably, why the learned of the laws did, in their reports, forbear to make mention thereof, was, because it entrenched in those days, as of late time, too much upon the common law of England; and the abuse in the exercise of the jurisdiction of the court might induce the sages of the law to pass it over in silence, as a usurpation of monarchy upon the common law of England, in the prejudice of the liberty of the subject granted by the great charter.’ Whoever receives

this as a reason of the silence of writers upon that subject, and contrasts it with the quotations from Coke and Lambard, in the text, as well as with Bacon’s eulogy upon it (*Hist.* p. 594), must admit that the English lawyers of ancient times had been cast in a different mould from those who flourished at a later period (*Rushworth’s Col.* vol. ii. p. 471). See also on the Star-Chamber, *Harl. MS.* Brit. Mus. No. 305, No. 2.

* Vol. v. pp. 453, 454.

ments, to alter the patents of the judges from *quamdiu se bene gesserint* (during good behaviour), to *durante bene placito* (during pleasure). We shall have occasion to give instances of integrity in Elizabeth's judges in opposition to the court, which cast a deeper stain upon the reign of Charles I.; secondly, that there never occurred an instance of any king arrogating a right to exercise the judicial function in this court, till James I., with the pedantic pretensions peculiar to him, embraced an opportunity to exhibit there his Solomon-like* powers; and even he never attempted it a second time. In the next place, it is extraordinary indeed to find this learned author assuming it as an incontrovertible point, that such a court necessarily put an end to all regular legal and exact plans of liberty, when, within a few years of the period he is now treating of, the plans of liberty adopted by parliament proved fatal to the prince. The true answer to his question—'Who durst set himself in opposition to the Crown and ministry, or aspire to the character of being a patron of freedom, while exposed to so arbitrary a jurisdiction?'—is, Elliot, Hampden, and the rest who did it. When this part of Mr. Hume's work is compared with that where he represents Charles I. as in so miserable a plight, from the encroachments of parliament on his prerogative, one would be apt to conclude that the powers of the Court of Star-Chamber had either ceased or been abridged, whereas they were vastly extended, and the court had entirely lost the very decency and appearance of justice which had characterised it under the Tudors. 'The slavish speech of whispering,' says even Hudson, 'was not heard to come from the noble spirit of those times, in that honourable presence, and not familiarly

* Solomon was the designation which the courtiers of that monarch bestowed upon him. Williams, in the funeral oration for James, makes a long parallel between the king of Israel and the English king. James

is said also to have attempted to preside in the King's Bench, but he was informed by his judges that he could not deliver an opinion (Blackst. vol. iii. p. 41, note).

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introduced there, till a great man of the common law, and otherwise a worthy justice, forgot his place of session, and brought it in this place too much in use.' * 'The slavish punishment of whipping,' says another writer, 'was not heard to come from the noble spirits in those times sitting in that honourable presence.' (This is not exactly correct, but nearly so). 'When once this court began to swell big, and was delighted with blood, which sprung out of the ears and shoulders of the punished, and nothing would satisfy the revenge of some clergymen but cropt ears, slit noses, branded faces, whipt backs, gag'd mouths, and withal to be thrown into dungeons, and some to be banished, not only from their native country to remote islands, but, by order of that court, to be separated from wife and children, who were by their order not permitted to come near the prisons where their husbands lay in misery; then began the English nation to lay to heart the slavish condition they were like to come to if this court continued its greatness.' †

But it is not easy to conceive what Mr. Hume meant by questioning whether any of the absolute European monarchies in his time contained so despotic a tribunal. Had he never heard of the Inquisition? Was he a stranger to the existence of the Bastile, and to the very issuing of *lettres de cachet*,‡ to immure within its dungeons, without a hope either of trial or reprieve, all who were obnoxious, not only to the executive, but even to the mistresses and minions of the court? Nay, had he never heard that those *lettres de cachet* were notoriously sold by the minions or mistresses of the court, in order that the purchasers might gratify revenge, or accomplish some sinister object by oppression? The very best French institution was

* Hudson, p. 36.

† Rushworth, vol. ii. p. 475. The account of the Court of Star-Chamber is extracted by him from a manuscript.

‡ 'I have been assured,' says

Blackstone, 'upon good authority, that, during the mild administration of Cardinal Fleury, above 54,000 *lettres de cachet* were issued, upon the single ground of the famous bull *unigenitus*' (*Com.* vol. i. p. 135, note).

worse than the Court of Star-Chamber ; for the general excellency of the English institutions operated as a check upon this, where all proceedings were public, while in France the judgment-seats were sold, and every tribunal held out, by its example, an encouragement to an arbitrary course in all the rest.

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The next subject that demands attention is the Court of High Commission, which was founded upon a clause of the Act that restored the supremacy to the Crown, in the 1st of Elizabeth. The words are these : ‘ The queen and her successors shall have power, by their letters patents under the great seal, to assign, name, and authorise, when and as often as they shall think meet and convenient, and for as long time as they shall please, persons, being natural-born subjects, to exercise, use, occupy, and execute, under her and them, all manner of jurisdiction, privileges, and pre-eminences, in anywise touching or concerning any spiritual or ecclesiastical jurisdiction within the realms of England and Ireland, and to visit, reform, redress, order, correct, and amend all such errors, heresies, schisms, abuses, contempts, offences, and enormities whatsoever, *which, by any manner, spiritual or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended* : Provided that they have no power to determine anything to be heresy but what has been adjudged to be so by the authority of the canonical scripture, or by the first four general councils, or any of them ; or by any other general council, wherein the same was declared heresy by the express and plain words of canonical scripture ; or such as shall hereafter be declared to be heresy by the high court of parliament, with the assent of the clergy in convocation.’ This statute confers no power whatever to fine, imprison, or inflict corporal punishment ; and when the court transgressed its limits, the remedy was always in the power of the injured, by applying to the ordinary courts for a prohibition. The real object was to correct

Court of
High Com-
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the heresies of the clergy by suspension and deprivation ; and surely, if there be a national establishment, all that enjoy functions under it ought to conform to its rules. Were it otherwise, the office might be converted to a very different purpose. And here it may be remarked, that the numerous suspensions and deprivations in this reign (their number, by the way, may be fairly doubted) afford no ground for charging the government with tyranny, since the doctrine and conduct of the ecclesiastics were irreconcilable to the establishment under which they accepted of livings. At this day the same consequences would follow. Various commissions were issued by this princess ; and in 1584 she granted one to forty-four individuals, by which she empowers them to enquire into all misdemeanors, not only by the oath of twelve men, and by witnesses, *but by all other means and ways they can devise*. Mr. Hume, following Mr. Neal, says that this included the rack, torture, inquisition, imprisonment ; but, besides that the rack never was attempted, the other clauses distinctly show that it never was contemplated. The very next clause distinctly appoints them to punish all who obstinately absent themselves from church, &c., by censure, or any other *lawful* ways and means, and to levy the penalties according to the forms prescribed by the Act of Uniformity. The third clause authorises them to visit and reform heresies, &c., which may *lawfully be reformed or restrained by censures ecclesiastical, deprivation, or otherwise, according to the power and authority limited and appointed by the laws, ordinances, and statutes of the realm*. The fifth clause empowers them to punish ‘ incest, adulteries, and all grievous offences punishable by the ecclesiastical laws, according to the tenour of the laws in that behalf, and according to your wisdom, consciences, and discretions ; commanding you, or any three of you, to devise all such *lawful* ways and means for the searching out the premises, as by you shall be thought necessary.’* Having cleared up this point, we may

* Neal's *Hist. of the Puritans*, vol. i. p. 400.

observe, that the commission was extremely arbitrary in authorising the oath *ex officio*, by which the accused was bound to answer interrogatories against himself, and in empowering the commissioners to fine and imprison. Of its illegality the queen and commissioners were so fully aware, that, as we learn from Sir Edward Coke, the commission was not, as it ought to have been, enrolled in chancery, lest it should have been questioned.* Besides, though fines were *imposed*, not one was *levied* in Elizabeth's time by any judicial process out of the exchequer; 'nor any subject, in his body, lands, or goods, charged therewith.'†

Many arbitrary acts were committed by the commissioners; but though Mr. Neal is pleased in one place to say that the privilege of prohibition from Westminster Hall was seldom allowed by the commissioners,‡ there does not appear, even from his own writings, to have been an instance of the prohibition having been refused.§ Indeed, when it came to that, the ordinary courts were bound to support their own jurisdiction, and the judges in that reign afforded many proofs of their readiness to assert the laws. The great cause of so many submitting to injustice and oppression from this court seems to have been their unwillingness to forfeit all hope of ecclesiastical preferment; for they never scrupled to accept of livings under an establishment, which yet they would not allow to be a church. The commissioners used to send pursuivants to ransack houses; but, when an individual defended his rights by killing the officer who attempted to enter his house by virtue of a warrant from the commissioners, the ordinary judges declared that he was not liable to prosecution, and dismissed him from the bar.|| It was

* 4th Inst. pp. 326, 332.

† Id. pp. 331.

‡ Hist. of Puritans, vol. i. p. 128.

§ Neal, pp. 590, 591. The author there informs us that prohibitions were freely granted till Laud governed the church, who terrified the judges

from granting them. In regard to the law, &c. see 4th Inst. p. 332 et seq.

|| Simpson's case, before the judges of assize in Northamptonshire, 42nd Elizabeth, 4th Inst. 332. There is an account of a similar case, and I

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in the time of Charles I. that this court lost all decency, and was no longer under the control of the laws, as the judges, who were governed by Laud, and changed at the pleasure of the king, did not longer vindicate their own jurisdiction.*

presume it is of the same, though it is said to have occurred in the 38th or 39th of Elizabeth, amongst the archbishop's manuscripts at Lambeth. The judges were anxious, as we are there informed, to proceed against the prisoner, but found they could not, as the warrant and whole measures were illegal. The same principle was recognised in James the First's time, a recusant having been discharged because his house had been searched by virtue of such a warrant (No. 943, art. 25).

* See *4th Inst. tit. Of Eccles. Courts*. Prohibitions were not denied in James's time. See upon this subject the speech of Mr. Pym, in the 16th of Charles I., where he observes, that it had been found in James's time that the statute 1st Elizabeth gave no power to inflict punishment, or enforce the oath, *ex officio* (*Parl. Hist.* vol. ii. p. 540; *Prynne's Breviate of the Prelate's intolerable Usurpations*, p. 176 *et seq.*). Charles I. had published a proclamation in the year 1626, prohibiting the publication of books on certain points of doctrine, and charging the archbishops and bishops to reclaim and repress all such spirits as should break the rule prescribed. 'Burton and Prynne,' says Heylen, 'amongst the rest, were called into the High Commission, and at the point to have been censured, when a prohibition comes from Westminster Hall to stay the proceedings in that court contrary to his majesty's will and pleasure, expressed so clearly and distinctly in the said proclamation: which prohibition they tendered to the court in so rude a manner, that Laud was like to have laid them by the heels for their pains' (*Life of Laud*, pp. 154-5). Prohibitions were early complained of by the prelates

(*Strype's Life of Whitgift*, pp. 521, 537). The following is a curious letter from Bishop Neil to Laud, dated 22nd January, 1637: 'Your grace in one of your letters gave me an inclining how that his majesty had assigned the High Commission fines for St. Paul's Church, and you wished me to think thereof at the mitigation of fines, and particularly of the Chester men's fines. In a former letter of mine to your grace, I informed you how that we had censured and fined six of the Chester men, viz. C. Brown, Peter Ince, Thomas Hunt, Peter Leigh, William Crawford, and Richard Golbourn, of which six, Brown, Ince, and Hunt have performed the penance enjoined them, and their fines remain to be certified. The other three, Leigh, Crawford, and Golbourn, have made an escape and cannot yet be found: but there is a writ sent hither from the chief baron, requiring us, under the hands and seals of three or more of us, in parchment, to certify all fines, bonds, and recognizances that concern these three (Crawford, Leigh, and Hunt), with the reasons and times of such fines imposed, and bonds and recognizances forfeited. I cannot hear that any such writ hath been sent to the commission. I hope that my lord chief baron and the barons do not think themselves to have a superintendency over the proceedings of the commission. If it were so, I would humbly prostrate the commission and myself at his majesty's feet, and beg a release of my executing it. Your lordship knows that by our commission we are permitted, in some cases, to proceed according to our discretions. Shall we be accountable to the barons of the Exchequer for our discretions? It shall be against my will. Your grace also

‘The queen,’ observes Mr. Hume, ‘in a letter to the Archbishop of Canterbury, said expressly, that she was resolved

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knoweth that, by our commission, we are directed when and how to certify twice a year under our common seal of office, and not a partial of two or three out of course under our private seal.’ He concludes by praying that prelates and their chancellors may be made justices of peace (*MS. in the Archbishop's Lib. at Lambeth*, No. 559). Charles authorised Laud to enforce the oath *ex officio*, to answer interrogatories, and to hold those *pro confesso* who obstinately refused to take it (*Id.* No. 571). A paper in Laud's own handwriting was adduced against him at his trial, in which there is the following article, being the 11th, ‘that some course may be taken that the judges may not send so many prohibitions’ (Prynne's *Complete Hist. of the Trial and Condemnation of W. Laud*, &c. p. 369). In his defence, Laud said, ‘For the prohibitions, as they were brought to courts, not to me, so they received their answers from them, not from me: and as many admitted in my time as in so many years of any other, I delivered in the papers’ (*Harl. MS. Brit. Mus.* No. 787). The title at the beginning of the volume is, ‘Several Papers found in Mr. Dell's Study, Secretary to Bishop Laud, Archbishop of Canterbury.’ Charles was not content with altering the patents of the judges; he granted a commission to the privy council to hear and determine all questions that might arise in the different courts about jurisdiction, and for that purpose to call the judges before them, to hear the parties, &c. The power to grant such a commission, it is said in the preamble, ‘is not only our undoubted and hereditary right by our prerogative royal, but also agreeable to the practice of our royal progenitors in this our kingdom, and to the equity and true intention of our laws’ (*Rym. Fæd.* vol. xix. p. 280 *et seq.*, dated 6th of May 1631). When Laud became supreme in the council, it is easy to conceive how, in regard to

the jurisdiction of the Court of High Commission, he would exercise the powers thus committed to him. But the following passage, from Clarendon, is decisive of the question as to this court. After stating that, whilst it was exercised with moderation, it was an excellent means to vindicate and preserve the peace of the church,’ he says, ‘But of late it cannot be denied that, by the great power of some bishops at court, it had much overflowed the banks which should have contained it; not only in meddling with things that in truth were not properly within their cognizance, but extending their sentences and judgments in matters triable before them, beyond that degree that was justifiable; and grew to have so great a contempt of the common law and the professors of it (which was a fatal unskilfulness in the bishops, who could never have suffered whilst the common law was preserved), that prohibitions from the supreme courts of law, which have, and must have, the superintendency over all inferior courts, were not only neglected, but the judges reprehended for granting them (which, without perjury, they could not deny), and the lawyers discountenanced for moving for them (which they were obliged in duty to do). So that thereby the clergy made almost a whole profession—if not their enemies, yet very undevoted to them.’ The fines, as we learn from the noble historian, were more frequent and heavier after the repairing of St. Paul's began—a circumstance likewise evinced by Neil's letter, quoted above. He says that ‘the fines were sometimes above the degree of the offence, had the jurisdiction been unquestionable, which it was not’ (*Hist.* vol. i. p. 283, oct. edit. 1717). Charles himself officially wrote a letter ordering of his own mere notion and certain knowledge, and in consequence of his supreme ecclesiastical power, the oath, *ex officio*, to be administered to those who should be summoned

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‘that no man should be suffered to decline, either on the left or on the right hand, *from the direct line limited by authority and by her laws and injunctions.*’ * But the learned author has not attended to the express words of the letter, which he quotes erroneously, and has thus committed a mistake of no small consequence to a thorough knowledge of Elizabeth’s government. The letter, which is dated in August 1571, runs thus :—‘Wher we required you, as the metropolitan of our realme, and as the principall person in our commission for causees ecclesiasticall, to have good regard that such uniform ordre in the divyne service and rules of the chirch might be duly kept, *as in the lawes in that behalf is provyded*, and by our injunctions also declared and explaned’ (the injunctions were issued in the 1st of her reign by virtue of the Act of Uniformity) : ‘and that you shuld call unto you for your assistance certen of our bishoppes to reform the abuses and disorders of sondry persons, sekyng to make alteration therin. We understanding that, with the help of the reverend Fathers in God, the Bishops of Wyncester and Ely, and some others, you have well entred into some convenient reformation of thyngs disordred, and that now the said Bishop of Ely is, by our commandment, repayred into his diocess, whereby you shall want his assistance, we myndyng to have a perfect reformation of all abusees attempted to deforme the unyformyty prescribed by ovr lawes and injunctions, *and that none shall be suffred to declyne ether on the left or on the right hand from the direct lyne lymitted by authorite of our sayd lawes and injunctions, do earnestly, by our authorite royall, will and chardg you, by all means lefull, to procede herein as you have begon ;*’ † &c. Taken as a whole, this letter cannot be considered indicative of an

into the Court of High Commission, and appointing that those who refused to take it should be held as confessed. — 4th February 1634 (Rymer F. xx.). He also got his judges to sanction, by their opinion,

the ecclesiastical usurpations (*Ib.* pp. 156, 168).

* Vol. v. p. 454.

† Murden. *Coll. of State Papers*, p. 183.

arbitrary character in the government. The queen does not pretend to act by her own authority, but by that which had been committed to her by the legislature ; and, however the policy of enforcing uniformity may be arraigned (we shall not repeat what we have said on that point in the preceding chapter), Elizabeth cannot be accused, in this instance, of exceeding the limits prescribed by parliament.

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‘ But martial law,’ says Mr. Hume, ‘ went beyond even these two’ (the Courts of Star-Chamber and High Commission), ‘ in a prompt, and arbitrary, and violent method of decision. Whenever there was any insurrection or public disorder, the Crown employed martial law, and it was during that time exercised, not only over the soldiers, but over the whole people : anyone might be punished as a rebel, or an aider or abettor of rebellion, whom the provost-marshal, or lieutenant of a county, or their deputies, pleased to suspect.’ In opposition to so bold and sweeping an assertion, we shall set the following authorities. Sir Thomas Smith, who held the office of secretary of state under Edward VI., and afterwards under Elizabeth, writes thus upon martial law : ‘ In warre time, and in the field, the prince hath also absolute power, so that his word is a law ; he may put to death, or to other bodily punishment, whome hee shall thinke so to deserue, without processe of lawe or forme of judgment. *This hath beene sometime used within the realme before any open warre in suddaine insurrections and rebellions, but that not allowed of wise and grave men, who, in that their iudgement, had consideration of the consequence and example, as much as of the present necessity, especially when, by anie meanes, the punishment might haue been done by order of lawe.* This absolute power is called martiall law, and euer was, and necessarily must be, used in al camps and hosts of men, where the time nor place doe suffer the tarriance of plcading and processe, be it neuer so short, and the important necessitie requireth speedie execution,

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that with more awe, the souldier might be kept in more straight obedience, without which neuer captain can doe any thing vaileable in the warres.* ‘If a lieutenant, or other that hath commission of marshall authority,’ says Sir Edward Coke, ‘in time of peace, hang or otherwise execute any man by colour of marshall law, *this is murder*, for this is against magna charta, cap. 29, and is done with such power and strength as the party cannot defend himself; and here the law implieth malice’ (*vide* Pasch. xiv. c. 3, in Scacario, the Abbot of Ramsey’s case). Thom. Countee de Lancaster being taken in an open insurrection, was by a judgment of marshall law put to death, in anno 14 Ed. IV. This was adjudged to be unlawful, *ed quòd non fuit arrainiatus, seu ad responsionem positus tempore pacis, ed quòd cancellaria, et aliæ curiæ regis fuerunt tunc apertæ, in quibus lex fiebat unicuique, prout fieri consuevit, quòd contra cartam de libertatibus cum dictus Thomas fuit unus parium et magnatum regni non imprisonetur, &c. Nec dictus rex super eum ibit, nec super eum mittet, nisi per legale iudicium parium suorum, &c., tamen tempore pacis absque arraniamento, seu responsione, seu legali, iudicio parium suorum, &c., adjudicatus est morti.*†

In the preceding chapter, a view has been taken of the state of society, and it has been shown that the higher and even the middling classes, instead of deprecating certain commissions of martial law, eagerly desired them, the aristocracy conceiving that they had no cause to dread those commissions when the execution was left to themselves, who arrayed the military. The insurgents could only be put down by force; and I have

* Smith’s *Commonwealth of England*, b. ii. c. 4.

† 3rd Inst. p. 52. Sir M. Hale says, that ‘if in time of peace a commission issue to exercise martial law, and such commissioners condemn any of the king’s subjects not being listed under the military power, this is, without all question,

a great misprision, and an erroneous proceeding, and so adjudged in parliament in the case of the Earl of Lancaster. And in that case the exercise of martial law in time of peace is murder’ (*Pleas of the Crown*, vol. i. p. 500. See also his *Hist. of the Common Law*, vol. i. p. 53).

not met with evidence of any executions by martial law of those taken with arms in their hands, while the legal authorities held that the commission was so far from warranting a recourse to martial law, except in the case of actual necessity, that the act would have been murder in the agents. Proclamations, containing threats of punishment against law, were frequently made; but they were only used *in terrorem*, without the slightest intention of being carried into effect; * and we may conclude that, as it was perfectly understood, the commission of martial law would not justify any illegal act, so the object was the same as in the case of proclamations—to inspire terror. The mere commissions, therefore, and Mr. Hume refers only to them, prove nothing.

Mr. Hume proceeds thus: ‘Lord Bacon says that the trial at common law granted to the Earl of Essex and his fellow-conspirators was a favour, for that the case would have borne and required the severity of martial law.’ The authority of Bacon’s name demands attention, though the great philosopher was ever ready to prostitute his talents and his pen to any state purpose which promised to advance his own fortune; but what says he of the very production from which Mr. Hume draws his statement?—that it was written at the express desire of the queen, and repeatedly perused and altered both by her and her council. ‘Myself,’ says he, ‘indeed, gave only words and form of style in pursuing their directions.’† In order to understand the meaning of this state paper (for it was nothing else), entitled ‘The Declaration of the Practices and Treasons of Robert Earl of Essex,’ it is proper to remark that Essex was a great favourite with the people, who (after that nobleman had paid the mulct of his offences, apparently the offspring rather of a disordered mind than of any purpose to overturn the government,

* Sir Matthew Hale informs us that proclamations were issued with penalties merely *in terrorem*, as none of the penalties could be inflicted

(Pars. Sec. of a Treatise, by Hale, in Hargrave’s *State Tracts*, ch. 9).

† Bacon’s Works, Birch’s edit. vol. ii. p. 136.

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and yet such as no government could overlook) were so enraged at his fate, that it was deemed necessary to quiet them by this state paper. But, though it be said in the outset that the case would have borne and required the severity of martial law, that point is barely touched, not dwelt on, and the production must be considered an homage to public opinion to which the monarch would not have descended, had she not felt the influence of the popular voice. Surely, however, a state paper published with a view to compose the public mind, and to impress the idea of her majesty's clemency as well as of the greatness of the insurrection, cannot be regarded as a proof either of the powers really exercised or arrogated by the sovereign; nor ought the historian to have quoted Bacon as his authority, without mentioning that he had virtually disclaimed the publication. Elizabeth's conduct in regard to the unfortunate Essex, on a former occasion, sufficiently bespeaks her respect for the laws and her solicitude for popularity. She had resolved to bring that nobleman to trial, but was dissuaded by Bacon, who told her that, as the earl was well spoken, and possessed 'the eloquence of accident—the pity and benevolence of his hearers'—it would not be for her honour to bring his case into public question.*

'We have seen instances,' continues Mr. Hume, 'of its' (martial law) 'being employed by Queen Mary in defence of orthodoxy.' Now, in the first place, Mary's reign, as we have already observed, ought never to be cited in illustration of the ancient government of England. In the second place, though it be true that a proclamation

* Bacon's *Apology for his Conduct to Essex*, in his works, vol. ii. p. 130. It is strange that Mr. Hume should not have adverted to this, instead of ascribing the abandonment of Elizabeth's purpose to her returning tenderness towards that nobleman. The queen then thought of publishing something from the Star-Chamber to vindicate the earl's restraint. Bacon

also dissuaded her from that, assuring her that it would have a quite different effect on the people from what she imagined, as they would say Essex had been wounded behind his back. She would not be dissuaded, however; yet she afterwards confessed that Bacon's advice ought to have been followed (p. 131).

was issued against books of heresy, treason, and sedition, wherein it is declared that whosoever had any of these books, and did not presently burn them without reading them or showing them to any other person, should be esteemed rebels, and without any further delay be executed by martial law, yet it does not appear ever to have been acted upon, or even to have been followed by any commission of martial law. Besides that, as we have already seen, upon the highest authority, proclamations with illegal penalties were often issued without any view to their being carried into effect; the proclamation, unaccompanied with such a commission, was innocuous, since no person was authorised to act upon it.

The proclamation was issued on the 6th of June 1558, only a few months before her death, as she died on the 17th of November following;* and we may remark, in passing, that it is strange Mr. Hume has stated the fact under the head of 'Transactions' in the year 1555. Bad as Mary's government was, it never arrived at the stage of despotism ascribed to it by this historian; and as it became worse towards the close of her reign, so the people indicated by many circumstances that they could not have endured it much longer.†

'There remains a letter,' proceeds Mr. Hume, 'of Queen Elizabeth's to the Earl of Sussex, after the suppression of the northern rebellion, in which she sharply reproves him because she had not heard of his having executed any criminals by martial law; though it is probable that near eight hundred persons suffered one way or another on account of that slight insurrection.' Now, besides that there appears to be a great mistake in regard to the number that suffered,‡ it may be remarked, with all

* Burnet, vol. iii. pp. 657, 666.

† In addition to what has been said in the preceding chapter, we shall just refer to Burnet, vol. iii. p. 640 *et seq.* (see also pp. 164, 165).

‡ Mr. Hume's statement regarding the number that suffered by the

executioner (see also p. 164) is founded upon an account given by Leslie, Bishop of Ross, of his negotiations: but as that individual was the great agent of Mary Queen of Scots, for stirring up this rebellion (in his account of his life he takes

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deference to this accomplished writer, that the very fact of criminals not having been executed by martial law in this case, is a striking proof of the general feelings and understanding of the age; for the northern rebellion was not by any means a slight insurrection, even according to Mr. Hume's account of it in the proper place. Some of the chief nobility were concerned in the conspiracy; foreign powers encouraged and assisted it; and it was only prevented from being most formidable by a discovery of their designs having obliged the rebels to take the field too soon. As it was, however, the insurgents, regularly trained and headed by the Earls of Northumberland and Westmoreland, were four thousand foot and sixteen hundred horse strong—a considerable army for the time; and, independent of an expected supply of

credit to himself for his indefatigable pains in obtaining the support of foreign states to this Catholic enterprise), and as he was long confined for his participation in that affair, his testimony to such numerous executions—numerous, indeed, when it is considered that only seventy-two suffered in the preceding reign for Wyatt's rebellion—would be entitled to little credit while contradicted by Camden, and unvouched by any other authority, were it to that effect. But there appears to have been a great mistake in the matter. Mr. Hume has quoted from the printed copy of Leslie's work, in Anderson's collection. Anderson, however, states that he took it from a manuscript in the Advocate's Library at Edinburgh, which he conjectured from the character to be in the handwriting of the bishop's secretary. But, on inspecting the manuscript, I found, to my astonishment, the number VIII. instead of eight hundred. Now, Camden tells us that sixty-six petty constables were executed at Durham, and some others elsewhere; whence I conclude that the number meant by Leslie was eighty. If this be disputed, I would ask, then, why not substitute any other number as well

as eight hundred, which, besides being contradicted by Camden, carries improbability on the face of it? Mr. Anderson indeed says that he compared this copy with one in a more modern hand in the Cotton Collection, and that he took from the last an additional part of the narrative which the other wanted, as not having been brought so far down. But there is not a syllable about any correction; and, if the numbers do disagree, whether shall what may be termed an original, or an after copy, be preferred? I omitted, while I attended the British Museum, to inspect the copy amongst the Cotton manuscripts; but I shall endeavour to have the fact ascertained, and give it in the Notes at the end of the volume.

There were two risings in the north (Camden in *Kes.* pp. 412-13), and in the second were three thousand borderers, who were mere robbers; yet the Queen published an act of indemnity immediately after they were routed.

The proclamation against bulls, &c., in 1570, is of a very different nature from that of 1588, and shows the moderation of government (Strype's *Ann.* vol. i. p. 575).

troops and arms from the Duke of Alva, governor of the Low Countries, they confidently anticipated a junction with all the Catholics in England—an event no less dreaded by the Protestant party than hoped for by their enemies. Indeed, the activity of government prevented another rising in Suffolk.* The leaders issued proclamations in a regular form, and everything bore the appearance of a terrible convulsion. Dismay prevailed amongst Protestants, who had so lately escaped from the cruel tyranny of Mary; † and, if we may draw an inference from their general complaints of her Majesty's ill-judged clemency to Catholics, they burned with a fury towards the insurgents at least equal to her own.‡ A fact must always be taken along with all its circumstances; and whoever weighs all these matters, will cease to regard this as indicating that arbitrary character in the government which has been ascribed to it.

‘But the kings of England,’ continues Mr. Hume, ‘did not always limit the exercise of this law to times of civil war and disorder. In 1552, when there was no rebellion or insurrection, King Edward granted a commission of martial law, and empowered the commissioners to execute it, as should be thought by their discretions most necessary.’ In order to understand the object and cause of this commission, the reader must recall to his remembrance the state of the country at the time. The lower classes, reduced, by the change in manners as well as by the Reformation, to beggary, and detesting the nobility and gentry as the authors of their misery, were almost

* Strype's *Annals*, vol. i. p. 565. A conspiracy was likewise hatching in Norfolk (*Id.* p. 577). See also Mr. Hume's own account of this rebellion in the body of his history. There were an immense number of ‘masterless’ men in the north about this time: warrants were issued against them, and 13,000 were apprehended, which broke the strength of the rebellion (Strype's *Ann.* vol. i. p. 535).

† A lively picture of the alarm is to be found in Strype's *Annals*, vol. i. p. 553. See upon the whole, p. 546 *et seq.* See also a letter from Elizabeth to Essex, amongst the documents regarding the rebellion, in Haynes, p. 555 *et seq.*

‡ Elizabeth was blamed by P. Wentworth, in parliament, for her clemency to Mary Queen of Scots.

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in a continual state of insurrection during Edward's reign; and, as the aristocracy were threatened by the insurgents, so they ardently desired sanguinary measures against that unhappy class—a desire in which most who profited by the new system appear to have concurred. On the other hand, the prince, or rather protector, was so far from acting out of any arbitrary spirit, that he pitied the poor, and endeavoured to alleviate their misery by executing the laws for preserving the old state of things. The protector's lenity, by the hostility it excited against him amongst the higher classes, proved the main cause of his ruin—a symptom of weakness rather than of exorbitant power in the executive. But, after his removal, the fury of the aristocracy against the tumultuous being no longer restrained, that commission, which Mr. Hume has referred to, was procured from the Throne; and, as the very class who solicited were allowed to execute it, they had no apprehensions of their own rights being affected by such a grant.* It is inconceivable, however, upon what principle the learned historian should have said that there was no insurrection at that time, for Strype, his own authority, besides, in various parts of his work, describing the country as subject to the most dreadful commotions during this reign, thus expresses himself in the very passage on which the historian founds his statement:—‘Popular disturbances and tumults seemed now to be very frequent; and the common people, uneasy under the present juncture, which occasioned, surely, that severe commission which was given out this month of March to John, Earl of Bedford, &c., to put in execution all such martial laws as should be thought necessary to be executed, and

* Besides generally referring to the preceding chapter, and the authorities there quoted, we shall here refer to the following: Strype's *Ec. Mem.* vol. ii. c. xvii. pp. 150, 152; c. xxi. p. 166, 171, 182, 192, 204; c. xxvii. pp. 219, 353. App. pp. 105, 109, &c. See also articles against

Somerset in Howel's *State Trials*. By the way, had Mr. Justice Blackstone consulted Strype's *Mem.*, he would have discovered the origin of Lord-Lieutenants, &c., who were first appointed in 1549 (*Ec. Mem.* vol. ii. c. xx. p. 373; *Black. Com.* v. i. p. 411).

instructions were also given in nine distinct articles.* The commission may be pronounced cruel and impolitic ; but it argued anything rather than power in the prince ; and there is no evidence of its having been acted upon.

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‘ Queen Elizabeth, too,’ says Mr. Hume, ‘ was not sparing in the use of this (martial) law. In 1573, one Peter Burchet, a Puritan, being persuaded that it was meritorious to kill such as opposed the truth of the gospel, ran into the street, and wounded Hawkins, the famous sea-captain, whom he took for Hatton, the queen’s favourite. The queen was so incensed, that she ordered him to be punished instantly by martial law ; but, upon the remonstrance of some prudent counsellors, who told her that this law was *usually* confined to turbulent times, she recalled her order, and delivered over Burchet to the common law.’ Of the two authorities referred to by Mr. Hume (Strype and Camden), Strype’s account of the matter is the most particular ; and, in illustrating a case of such importance to the constitutional history of England, we shall make no apology for giving his words:—‘ This wicked principle of murdering for God’s sake, the queen apprehended so much danger in as that of her own life, as well as that of others of chief rank about her, and so enraged her, that at first she commanded this murderer to be immediately executed by martial law ; and a commission for that purpose was drawn up. And this she resolved to do, as her sister Queen Mary had done, in that severe reign, towards Wyatt’—it must have been towards one of Wyatt’s followers, if towards any, for he was himself regularly tried—‘ especially having heard it by report of the Earl of Leicester, and he from the admiral. Yet not with any their approbation of such rigorous doings. So the queen in her great closet, at service therein, gave order to Mr. Secretary to bring to her the commission for execution of this man by martial law, to be signed by her after dinner. But the Earl of

* Strype’s *Ec. Mem.* vol. ii. pp. 373, 458–9.

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Sussex, Lord Chamberlain, and the Lord Admiral were much against it; and the Lord Treasurer was not then at court, whose only advice was then wanted, to prevent it. The earl, therefore, even while he was at dinner, wrote to him, it being the 28th of October, "first praying God to put it into the queen's heart to do the best, and then acquainting him with the particulars: as that the Lord Admiral was greatly grieved with the speech that he should devise it, when as he was directly against it; that, indeed, he had told my lord of Leicester of the execution done in London, in the rebellion of Wyat, but he never told it to the queen; that the Earl of Arundel was also very vehement against it in speech to him (the Lord Chamberlain). He added, that the queen asked for the Lord Treasurer, and seemed to look for his being at court, because it was holy-day." At length, by the counsel, as it seems, of the Lord Treasurer, the queen set aside that purpose of hers of Burchet's speedy execution after that manner.*

Of Wyat's adherents, fifty are said to have been executed in London, and twenty-two elsewhere; † but these appear to have been regularly arraigned and condemned. Wyat was taken on the 7th of February, and the execution took place on the 14th; and had it been otherwise, the matter must have been too notorious to have been unknown either to Elizabeth, who was confined on

* Strype's *An.* vol. ii. p. 288.

† Mr. Hume, on the authority of a letter from Mons. de Noailles (then ambassador in England), to the constable of France, says that four hundred persons are said to have suffered for this rebellion; but the statement by Noailles is absurd, and the cause of it may be conceived from the compliment which he pays to his own good king, by contrasting his clemency towards the multitude in a sedition at Bourdeaux about the Gabelle, with the English queen's cruelty (*Embass. de Noailles*, vol. iii. p. 124). The Protestants exaggerated

Mary's cruelty, and loudly condemned it in this instance. It cannot be conceived, therefore, that the number would be diminished, and the various executions are distinctly enumerated by them. The account by Leslie, Bishop of Ross, of the executions on the northern rebellion under Elizabeth, is, as we have seen, equally questionable. But the historian seems fond of large numbers on those occasions; they indicate the greater despotism in the prince, and form a contrast with the mildness of the Stuarts.

a suspicion of having been engaged in the conspiracy, or to anyone else, and would have been particularly mentioned by historians. There must have been only one execution, therefore, by martial law, not executions; indeed, it is execution which is mentioned. If any such execution really occurred, the probability is that it was one of Bret's soldiers, who, having been sent against the insurgents, went over with their leader to the opposite party. Whoever he was, he was a man of no note, as all such were regularly condemned. If any case could have justified a resort to martial law upon the captives, it was Wyatt's, for the insurrection was at one time most formidable. He expected, and the other party apprehended, that the Londoners would join him; and, had he not been too irresolute and feeble-minded for such an enterprise, it might have been attended with a different result.*

Camden's account of Elizabeth's intention towards Burchet is this:—'The queen was so extraordinarily incensed at Burchet's assassinating Hawkins, who was in great favour, that she commanded that the man should be presently executed by martial or camp law, till she was informed by some prudent persons that martial or camp law was not to be used but in camps, and in turbulent times; but that at home, and in times of peace, the proceedings must be carried on in the way of a judiciary process.†

It is unnecessary to observe, in regard to that case, that it is so far from supporting the statement of Mr. Hume, that it does exactly the reverse. Had martial law been common, could it ever have happened that one solitary instance, and that doubtful too, which is said to have occurred in the hour of a great rebellion carried into the very capital, afforded the only pretext for the queen's intended proceeding? When is it, too, that courtiers so

* Burnet, vol. iii. p. 484 *et seq.*;
 Strype's *Ec. Mem.* vol. iii. p. 86 *et seq.*;
 Heylin's *Hist. of Queen Mary*, p. 33 *et seq.*

† Kennet's *Coll.* vol. ii. p. 449. The translation is literal. See the original, pars. ii. p. 269, ed. 1677.

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strenuously oppose an arbitrary purpose in the sovereign? Only when it is inconsistent with the general spirit of the government.

‘But,’ proceeds Mr. Hume, ‘she’ (the queen) ‘continued not always so reserved in exerting this authority. There remains a proclamation of hers, in which she orders martial law to be used against all such as import bulls, or even forbidden books and pamphlets, from abroad; and prohibits the questioning of the lieutenants, or their deputies, for their arbitrary punishment of such offenders, *any law or statute to the contrary notwithstanding.*’ It has already been said, upon the highest authority, that proclamations were frequently issued, containing a threat of penalties which were not meant to be carried into effect, but were published merely for the purpose of creating a wholesome terror amongst certain classes. Yet, though the proclamation alluded to by the historian was not acted upon, the reader may perhaps be of opinion that, if the fact were as stated by him, the government must have been very arbitrary, and therefore it will be necessary to investigate the matter.

In entering upon this point, we must repeat that a case must always, with a view to understand it, be considered along with all its adjuncts, and never was this more necessary than on the present occasion. Besides the open rebellion in the north, by the Catholic party, during this reign, the Papists were ever engaged in plots and conspiracies against the queen’s life and the established government. To encourage these designs, the pope issued a bull, in the early part of the reign, absolving the subject from his allegiance, and instigating him, under the pain of damnation, to dethrone Elizabeth, and proclaim a Catholic prince.* The bull, after having been privately circulated, and having occasioned the northern rebellion, was affixed by John Felton to the Bishop of London’s

* Bacon’s Works, vol. ii. p. 43. ern rebellion to it; this is also done
He, with others, ascribes the north- in the statute 13 Eliz. c. 2.

gates,* and set up at Pont St. Etienne, in Paris, on the same day: the sensation created by it may be imagined from the language of Bishop Jewel, who, in a sermon, characterised it 'as a practice to work much inquietness, sedition, and treason against our blessed government: for it deposed the queen's majesty (whom God long preserve) from her royal seat, and tore the crown from her head; it discharged all her subjects from their true obedience; it armed one side of them against the other; it emboldened them to burn, to spoil, to rob, to kill, to cut one another's throats.'† Parliament, justly alarmed by this and other practices of the Romish party, passed acts, making the importation of bulls from Rome, which had been previously punishable with the pains of premunire, high treason; and likewise declaring it to be treasonable to compass, or imagine to depose the queen, or intend her bodily harm, or advisedly to deny her title, or to affirm that she was a heretic, schismatic, illegitimate, &c., or to incite foreigners to invade the kingdom, &c., or to deny the power of parliament to regulate the succession.‡ These statutes were evaded, and therefore it was afterwards made treason to practise, to withdraw the subjects from their obedience to their prince and the established religion, or to be reconciled to the church of Rome.§ Even this, however, did not frighten Catholics into submission, who, esteeming it a glory to destroy an heretical princess, no sooner failed in one conspiracy than they engaged in another. Of the public feeling, some idea may be formed from the voluntary association into which the peers and commons of parliament, not in their character of legislators, but of noblemen and gentlemen, entered in the year 1584 or 1585, binding themselves by oath to revenge the queen's murder, should the malice of

* Strype's *Annals*, vol. i. p. 486; vol. ii. p. 17. Camden in *Ken.* p. 427 et seq. Felton scorned to fly, thinking the act meritorious, and he was reputed a glorious martyr (Camden, p. 428).
† Strype's *Annals*, vol. i. p. 539.
‡ 13 Eliz. cc. 1 & 2. § 23 Eliz. c. 1.

CONSTITUTIONAL HISTORY OF THE BRITISH EMPIRE.

AP. her enemies prove successful.* The Babington conspiracy
 I. followed, and in 1588, the *annus mirabilis*, as it is called,
 the Spanish armada threatened general destruction. The
 invaders expected that the English Catholics would flock
 to the standard of the Duke of Parma the instant he landed,
 and, though a few of that body proclaimed their deter-
 mination to resist the invasion, the Protestants apprehended
 the event of which their enemies were so confident.
 While general consternation prevailed, as it was scarcely
 believed that the kingdom possessed resources to meet so
 mighty an armament, and the fear of internal commotion
 increased the alarm; while every preparation testified the
 greatness of the emergency, and Elizabeth displayed a
 heroism which must render her memory respectable to
 the latest ages, the pope issued a bull, declaring her
 accursed, and deprived her of her crown, and committing
 the invasion and conquest of the realm to the Catholic
 king, with power to execute his purpose by sea and land,
 and to take the crown to himself, or to limit it to such a
 potentate as should be agreed on by his holiness and him.
 This bull was followed by a great many copies of an
 English book, the production of Cardinal Allen, which
 was printed at Antwerp, and sent into the kingdom even
 while the armada was daily looked for (and another by
 the same author was ready for publication), denouncing
 Elizabeth as a usurper, heretic, and schismatic, as illegiti-
 mate, &c., equally unworthy of rule and of life; charging
 all to join the Duke of Parma, and proclaiming it to be
 lawful to lay violent hands on the queen. Other works
 of a similar tendency were published at the same time.†
 At so awful a crisis, when the existence of everything
 dear to Englishmen was at stake, the importation of bulls
 from Rome, or of forbidden books, acts of high treason
 in themselves, assumed the blackest dye, and may fairly
 be pronounced, in familiar yet expressive language, a

* Strype's *Annals*, vol. iii. p. 293.

† Strype's *Annals*, vol. iii. b. ii. c. 18.

beating up for recruits to rebellion, for the purpose of forming a junction with an invading and inveterate enemy. But there was no time left to assemble parliament, that new measures against treason of so audacious a nature might be devised in the usual course; and on such an occasion the executive was justified in adopting, for the common safety, an extraordinary and illegal remedy for the evil. The plea of necessity ought ever to be received with caution; but where it does exist, it is, of course, paramount to all law.* It is to the credit of Elizabeth's government, however, that this proclamation, which Mr. Hume has adduced as a proof of the despotism of the times, was merely used *in terrorem*, according to a practice, as has already been seen, sometimes resorted to; and that it was not followed by any commission even verbally authorising the carrying of it into effect. It is worthy of remark, that after the danger was past, parliament, while it gave to the queen the tribute of applause which her conduct had so fairly earned, testified its watchfulness over the public liberty by petitioning for leave to bring in a bill of indemnity for all illegal imprisonments in the season of alarm.†

Thus the case which Mr. Hume has represented as the abstract of tyranny, appears, upon examination, in a very different light indeed: and had that eminent writer attended to the date of the proclamation, he could not have fallen into such a mistake; for, in relating the affairs of that memorable period, he says that Elizabeth, 'while she roused the animosity of the nation against popery, treated the partisans of that sect with moderation, and gave not way to an undistinguishing fury against them.' 'She rejected all violent counsels, by which she was urged to seek pretences for dispatching the leaders of that party: she would not even confine any considerable number of them.'

* The proclamation is dated on the 1st July. The armada had retired for a season, but sailed again for the

English coast on the 15th of that month.

† *Parl. Hist.* vol. ii. p. 258.

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‘ We have another act of hers ’ (Elizabeth’s), continues the historian, ‘ still more extraordinary. The streets of London were much infested with idle vagabonds and riotous persons. The lord mayor had endeavoured to repress the disorder; the Star-Chamber had exerted its authority, and inflicted punishment on the rioters; but the queen, finding these remedies ineffectual, revived martial law, and gave Sir Thomas Wilford a commission of provost-martial, granting him authority, and commanding him, upon signification given by the justices of peace in London or the neighbouring counties, of such offenders worthy to be speedily executed by martial law, to attack and take the same persons, and in the presence of the said justices, according to the justice of martial law, to execute them upon the gallows or gibbet openly, or near to such place where the said rebellious and incorrigible offenders shall be found to have committed the said great offences.’ ‘ I suppose,’ observes Mr. Hume, ‘ it would be difficult to produce an instance of such an act of authority nearer than Muscovy.’ The only authority quoted by this writer is the commission itself; but, surely, an insulated state paper is not calculated to afford sufficient information upon so important a subject, since it is impossible to estimate a measure correctly without a thorough knowledge of all the circumstances out of which it emerged, and with which it was accompanied; particularly as proclamations and commissions were sometimes issued *in terrorem*, though it would have been murder in the commissioners to have acted upon them. The state of society, as we have described it in the preceding chapter, was, throughout England, wretched; and London at this time was greatly infested with vagrants, some of them discarded soldiers, others assuming that and various fictitious characters, who, colleaguings with the apprentices, then a powerful as well as a numerous body, excited alarming insurrections. Some years before, the vigilance of the city government had frustrated one great attempt by the

apprentices against the foreigners, who were generally hated as engrossing the trade which the people conceived to be their own by birthright. This failure did not curb the licentiousness of that body, who had now acquired such an increase of strength by their junction with the vagrants; and as milder remedies were resorted to in vain, the city magistracy, who about this period evinced a high spirit in support of their privileges,* themselves applied to the Throne, through their mayor, for martial law, as the only means of repressing the disorders—a clear proof that they apprehended no danger from such a precedent. Elizabeth, at their request, granted the commission to Wilford; but he, apparently satisfied that it could not warrant the exercise of the illegal power it verbally conferred, patrolled the streets with a band of armed followers, and, having secured five of the ringleaders, carried them before the justices for examination only. The justices committed them for trial; and the offenders, having been regularly arraigned and convicted at Guildhall of high treason, suffered the punishment of their crimes.† Most assuredly the learned historian might have discovered an instance of a proceeding much more arbitrary than this, without travelling to a great distance, much less to Muscovy;‡ and he must have been ignorant

* The instances in which the city, about this time, showed its spirit, were—1, in resisting a demand of bridge-money, by Sir J. Hawkins; and 2, in maintaining their privileges against an attempt by the court to interfere with the choice of their recorder (Maitland's *History of London*, vol. i. pp. 277, 279).

† In the commission to Wilford, it is said, that 'there had been sundry great and unlawful assemblies of a number of base people, in riotous sort; and that the punishment inflicted by the Star-Chamber had failed, as such desperate people cared not for such punishment' (Rym. *Fed.* vol. xvi. p. 279. See Maitland's *Hist. of Lond.* vol. i. pp. 278, 279;

Stow's *Survey*, by Strype; Stow's *Annals*, pp. 769, 770). The same species of insurrection as happened on May-day, in the time of Henry VIII. was apprehended from the apprentices a few years before (Mait. p. 271).

‡ By 1 Geo. I. it is enacted, that 'if twelve persons assemble to the disturbance of the peace, and, being commanded to disperse by proclamation of any justice of the peace, sheriff, under-sheriff, or mayor of a town, shall continue together for an hour afterwards, the contempt shall be felony without benefit of clergy. Further, if the reading of the proclamation be by force opposed, or the reader in any manner wilfully

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Offices of
High Con-
stable and
Earl Mar-
shal.

indeed of the temper of the French government, to which he was so much attached, not to know that such disorders in that country would have immediately provoked the most sanguinary measures.

‘The patent of high constable,’ says Mr. Hume, ‘granted to Earl Rivers, by Edward IV. proves the nature of the office. The powers are unlimited, perpetual, and remain in force during peace as well as during war and rebellion. The parliament in Edward IV.’s reign acknowledged the jurisdiction of the constable and marshal’s court to be part of the law of the land.’ The accomplished writer has not, in other respects, given a true picture of that age; but in this instance he has outraged the case to a most extravagant degree. The office of high constable was hereditary, and ceased with Edward Duke of Buckingham, beheaded on a charge of treason in the 12th of Henry VIII.;* and as the earl marshal was, by some, supposed to have been the constable’s deputy, it was questioned whether one could be legally constituted to that office after the other ceased. Earls marshal were, however, subsequently created, and the office was at times put into commission. But the judicial powers of the office extended only to the authority belonging to a Court of Chivalry, and were not permitted to interfere with the administration of justice in anything which regarded the common law.

The steward and marshal of the household had early attempted to extend their very limited jurisdiction, which related to contracts and trespasses within the verge of the court, and repeated statutes repressed the usurpation; †

hindered from reading it, such opposers and hinderers are felons without benefit of clergy; and all persons to whom the proclamation ought to have been made, and who, knowing of the hinderance, do not disperse, are likewise felons without benefit of clergy’ (Black. Com. vol. i. p. 279). Yet, according to Mr. Hume’s idea, the English government then in-

clined too much to republicanism. We say nothing of the measures adopted in Ireland.

* Holinshed, vol. ii. p. 805. See there a list of all the high constables. Note by Selden to Fortescue, *De Laud. Leg. Ang.* No. 19.

† *Artic. Sup. Cart.* 5 Ed. II. c. 26; 27 Ed. II. st. ii. c. 5; 5 Ed. III. c. 2; 10 Ed. III. c. 1.

but the high constable and marshal had, probably owing to the jealousy which the monarch must have entertained of an hereditary office like the constable's, exercised their powers with moderation till the time of Richard II., when the Commons complained of a late encroachment from that quarter upon the common law; and by the 8th of that king, c. 2, these great officers were ordained to confine themselves within the ancient limits of their offices. This, however, did not repress the evil, and, therefore, by the 13th of the same king, c. 5, it was provided, 'at the grievous complaint of the Commons, that the court of constable and marshal hath encroached, and daily doth encroach contracts, covenants, trespasses, debts, and detinues, and many other actions pleadable at the common law, in great prejudice of the king and of his courts, and to the great grievance and oppression of the people;' that this court should not interfere with anything determinable by the common law; and declared that its duty related exclusively 'to contracts touching deeds of arms and of war out of the realm, and also of things that touch war within the realm, which could not be determined and discussed by the common law,' &c. The law was never altered upon this subject, and it was not till the time of Edward IV. that the people had again reason to complain of the high constable, in consequence of the monstrous patent granted by that prince, in the 7th of his reign, to his father-in-law, Earl Rivers. But whoever calls to mind the state of public affairs at that period, convulsed as the country was with intestine dissension, and enjoying only a respite from a ferocious civil war,* will never consider such a patent, when the country was necessarily under a sort of military government, as affording any evidence of the constitutional principles of England, in contradiction to the united force of all other authorities. Sir Edward Coke pronounces it 'a most irregular precedent,' and says that, 'therefore, by

* Mr. Hume ought to have remembered the old maxim, *Leyes silent inter arma*.

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no means the same, or the like, is to be drawn into example.* But it is inconceivable how Mr. Hume should have adduced this as a proof of the tyranny of Elizabeth's time, when the office of high constable had so long ceased. Had he consulted any authority whatever—for all authorities agree upon this point—he must at once have been satisfied of the error into which he had fallen. The nature of the constable's and marshal's jurisdiction is thus described by Lambard, whom we quote because we have already seen how far he goes in support of the prerogative, and he dedicated his work to Sir Robert Cecil, then secretary of state:—'The Court of the Constable or Marshal of England determineth contracts touching deeds of arms out of the realm, and handleth things concerning war within the realm, as combats, blazons, armoury, &c., but it may not deal with battle in appeals, nor, generally, with any other thing that may be tried by the laws of the land.'† Crompton, Camden, Cotton, Coke, and others agree with Lambard. As to the Act of Edward VI., which, according to Mr. Hume, acknowledged the constable's and marshal's jurisdiction to be part of the law of the land, it does not appear how such an enactment could affect the present question, unless it had abrogated the statutes of Richard II., which, according to the highest authorities, Coke, Hale, &c., never were annulled; and surely the learned author must have committed some strange mistake in quoting the 7th Edward VI. c. 20, for there is no such chapter, and I have not been able to discover any statute during that reign applicable to the court of constable and marshal.‡ It was during the

* *4th Inst.* p. 127.

† *Arch.* p. 51.

‡ Fortescue, *De Laud. Leg. Ang.* c. 32, with note by Selden, No. 19; Lambard, p. 51 *et seq.*; Coke's *1st Inst.* pp. 106 and 391; *2nd Inst.* p. 51; *3rd Inst.* p. 26; *4th Inst.* c. 17. Sir Edward remarks, that no addition can be made to the jurisdiction of any court without an Act of Par-

liament (Crompton's *Jurisdic. of Courts*, c. 5). See in Hearne's *Discourses of Antiquity*, various treatises by Camden, Cotton, Thinne, Plott, &c. Hawkins, in his *Pleas of the Crown*, refers to the stat. of Rich. II. as limiting the jurisdiction of the constable and marshal (b. ii. c. 4). 'The jurisdiction of the constable and marshal,' says Sir Mat. Hale,

reign of Charles I. that a court, called the Marshal's Court, was erected, which made such grievous encroachments upon the privileges of the people that Lord Clarendon pronounces it 'a monstrous, usurped jurisdiction;' and, indeed it was he, then Mr. Hyde, who moved for its abolition, declaring it 'a court newly erected, without colour or shadow of law, which took upon itself to fine and imprison the king's subjects, and to give great damages for matters which the law gave no damages for.' *

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'There was,' continues Mr. Hume, 'a grievous punishment very generally inflicted in that age without any other authority than the warrant of a secretary of state, or of the privy council, and that was imprisonment in any jail, and during any time that the ministers should think proper. In suspicious times, all the jails were full of prisoners of state, and these unhappy victims of public jealousy were sometimes thrown into dungeons, and loaded with irons, and treated in the most cruel manner,

Imprisonment by warrant of a Secretary of State, or of the Privy Council.

'is 8 Rich. II. c. 2, and 13, c. 5; and not only by these statutes, but more by the common law, is their jurisdiction limited. They are not to meddle with anything determinable by common law' (*Hist. of the Common Law*, vol. i. p. 52; *Pleas of the Crown*, vol. i. p. 500). Mr. Hume has, in a note upon his *History of Edward IV.*, referred to Spelman's *Glossary*, *verb. Constab.* The account by Spelman is very imperfect, yet he says the office, which had become grievous to the people, was regulated by the 13th Rich. II.; but that the statute had been disregarded in the patent to Earl Rivers (see Reeves' *Hist. of the English Law*, vol. iii. p. 196, edit. 1787). Some account is also given of the admiral's jurisdiction, which was strictly defined. One of the charges against Rich. II. art. 26, was, that, 'contrary to the great charter, he had caused divers lusty men to appeal divers old men, upon matters determinable at the common law in the Court Martial, because in

that court is no trial but only by battle, whereby the said old men, fearing the sequel of the matter, submitted to his mercy, whom he fined, and ransomed unreasonably' (Hayward, p. 201). The only other authority referred to by Mr. Hume is Sir John Davies' work on impositions—a book written to ingratiate himself with King James; but, however the author prostituted his talents in other respects, there is nothing there to support Mr. Hume's statement. He merely says, 'That part of the law of nations whereby the high constable and marshal of England do proceed in their courts of war and chivalry, is called the law of the land' (p. 9); a point undoubted (*Harl. MS.* No. 305; Cotton, *Jul. t. vi.* No. 41, Brit. Mus). This last is a patent by James I. putting the office into commission, and distinctly shows that its powers were limited to questions about coats of arms, &c.

* Clarendon's *Life*, by himself, vol. i. p. 37 (or in oct. p. 72), &c.

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without their being able to obtain any remedy from law. This practice was an indirect way of employing the rack.' It is very unfortunate that the learned author has not thought proper to adduce some instances of this atrocious proceeding, and of justice having been denied by courts of law; for the English, regarding imprisonment as torture and civil death, were ever jealous of their personal liberty,* and had provided many statutes beside *Magna Charta* to secure themselves from that evil. To such a degree did they carry their apprehensions of any encroachment of prerogative against their personal rights in this respect, that after the defeat of the Spanish armada, the Commons, as we have already mentioned, petitioned for leave to bring in a bill of indemnity for the illegal imprisonment of some Catholics on that momentous occasion; and during Elizabeth's time, as well as during that of her predecessors, the judges liberated individuals who had been imprisoned by the express command of the sovereign and council. In the 34th of Elizabeth, certain great men, having been offended at the liberation of some prisoners, procured a command to the judges not to proceed; but that venerable body continued to discharge their duty by setting the prisoners at liberty in the face of this order:† and having been desired to specify in 'what cases a person sent to custody by her majesty or her council, some one or two of them, is to be detained in prison, and not to be delivered by her majesty's court or

* See the debates on this subject in 1627 (Rush. vol. i.; Franklyn's *Annals*; *Parl. Hist.*; Coke's *2nd Inst.* p. 54; *4th Inst.* p. 182).

† Anderson's *Reports*, p. 297 *et seq.* At that time a crying grievance existed—that of individuals being confined, by order of privy councillors and noblemen, to gratify resentment, or promote their own unjust schemes; but the judges exerted themselves to put a period to such intolerable oppression, and never failed to release the confined who applied to them. Their exertions, however, were ineffectual, as these wretched men, having been liberated from one prison, were frequently hurried away to some secret place of confinement, and the judges represented the matter to the Throne. Mr. Hume (p. 465) has adduced this as a proof of the despotism of the government; but surely with small reason, for it arose from the badness of the police and power of the aristocracy, and the weakness of the executive. If privy councillors had possessed the power of commitment without assigning the cause, the judges could not have interposed.

judges,' they gave it as their opinion (which they delivered in writing to the chancellor and treasurer), 'that if any person be committed by her majesty's command, from her person, or by order from the council board, or if any one or two of her council commit one for high treason, such persons so in the cases before committed may not be delivered without due trial by the law, and judgment of acquittal had. Nevertheless, the judges may award the queen's writ to bring the bodies of such persons before them, and *if, upon return thereof, the causes of the commitment be certified to the judges as it ought to be*, then the judges in the cases before ought not to deliver him, but to remand the prisoner to the place from whence he came, which cannot conveniently be done unless notice of the cause in generality or else specially be given to the keeper or gaoler that shall have the custody of such a prisoner.' *

* I quote from Chief Justice Anderson's *Reports*, p. 298, as the words differ there a little from the copy in Rushworth and Franklyn, said to have been taken from this judge's *Reports*, then in manuscript. The reader will not be of opinion that Mr. Hume was authorised by these words to say that the judges expressly declared, that a person sent to custody by the queen in her council was not bailable. Indeed, the opinion was in vindication of the release of prisoners against an express order from the court; and the same principle was subsequently acted upon (see Selden's *Argument*, in 1628; Franklyn, p. 267, whole speech, with the cases, &c. from p. 264-280). In 1627, Judge Whitelock defended his own conduct and that of his brethren for refusing the release of certain gentlemen imprisoned about loan-money, by saying that they had determined nothing, &c.; and, says he, 'it appears in Dyer, 2 Eliz., that divers gentlemen being committed, and requiring habeas corpus, some were bailed, others remitted, whereby it appears much is left to the discretion of the judges.' This is in support of our text. The judge proceeds to

state that he 'never saw nor knew of any record, that upon such a return as this' (a special commitment) 'a man was bailed, *the king not first consulted with*' (*Id.* pp. 249-50; Rush. vol. i. p. 510). The opinion of the judges in the 34th of Elizabeth, had, in the case alluded to, been misrepresented, and Selden produced Chief Justice Anderson's report of it to the house, 'which,' said he, 'will contradict all those apocrypha reports that go upon the case' (Frank. p. 250). When the cases in favour of the liberty of the subject in this respect were cited in 1628, not a precedent on the other side could be adduced (Rush. vol. i. p. 535). Selden chiefly managed the argument as to the book cases, but Sir Edward Coke also spoke upon the subject, and, after arguing the point on legal principles, he took occasion to add four book cases and authorities, all in point, saying, that 'if the learned counsel on the other side could produce but one against the liberties so pat and pertinent, oh how they could hug and cull it' (*Ib.* See also *Harl. MS.* Brit. Mus. No. 37; Coke's *2nd Inst.* pp. 54, 615; *4th Inst.* pp. 71, 182).

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Thus the power of the queen and her council to imprison at will was denied, for the cause must be certified, as well as be one which it is the object of government to bring to a trial. The opinion is ill expressed, but it would appear that the words ‘high treason,’ as the cause of commitment, applied to all the cases of custody as well as to the last; and it will be observed that the question put to the judges was not whether the queen and her council could imprison at pleasure, but in what cases the commitment was good; and that they asserted their right to grant a *habeas corpus*, that the cause might be ascertained. The construction put upon the opinion appears to be fully warranted, not only by the case to which it referred, as well as an after case in that reign, but by the use which was made of it in the year 1627; for Coke and Selden quoted it as decisive against the right to commit without assigning the cause, then claimed by the Crown, and the lawyers on the other side did not oppose what was said, while they could not adduce a single precedent in support of the principle for which they had contended.

Had such a power been exercised by Elizabeth, it would have been such a flagrant violation of law as could not be too soon repressed; and submission to it could only have been attributed to the extraordinary situation in which she was placed.

The use of
torture.

‘But,’ says Mr. Hume, ‘the rack itself, though not admitted in the ordinary administration of justice, was frequently used, upon any suspicion, by authority of a warrant from a secretary of state.’ Torture has at all times been abhorrent to the feelings of Englishmen, and unknown to the laws of that country. Sir John Fortescue, who, as we formerly observed, sat long as chief justice under Henry VI., and was afterwards nominated chancellor, founds his panegyric on the English laws partly upon their being uncontaminated with this horrid practice—a practice which, he justly remarked, ought not to be accounted law, but rather the highway to the devil,

but which was yet common in France and other countries where the civil code obtained.* Sir Thomas Smith, who held the office of secretary of state both under Edward VI. and Elizabeth, and who wrote his work with much the same view as Fortescue—to contrast the free government of his native country with that of surrounding states—likewise expresses abhorrence at such a practice, and congratulates England on its being free from it.† Harrison, a popular writer of Elizabeth's time, takes the same view.‡ Sir Edward Coke expresses his abhorrence of torture in the strongest terms, declaring that there is no law to warrant it. 'And,' says he, 'the poet, in describing the iniquity of Rhadamanthus, that cruel judge of hell, saith—

Castigatque, auditque dolos, subigitque fateri.

First, he punished before he heard; and when he had heard his denial, he compelled the party accused, by torture, to confess it.' He then shows that this is not only against the law of God, but against magna charta; and proceeds thus:—'Accordingly, all the said ancient authors are against any pain or torment to be put or inflicted upon the prisoner before attainder, nor after attainder, but according to the judgment; and there is no one opinion in our books or judicial records (that we have seen and remember) for the maintenance of tortures, torments,' &c. § 'The trial by rack,' says Blackstone, 'is utterly unknown to the law of England; though once, when the Dukes of Exeter and Suffolk, and other ministers of Henry VI., had laid a design to introduce the civil law into this kingdom as the rule of government, for a beginning thereof they erected a rack for torture, which was called, in derision, the Duke of Exeter's daughter, and still remains in the Tower of London, where it was occasionally used as an engine of state, not of law,

* *De Laud. Leg. Ang.* c. 46.

† *Commonwealth*, b. ii. c. 27.

‡ Harrison on this point follows

Sir Thomas Smith very closely (p. 184, b. ii. c. 11).

§ *3rd Inst.* p. 35.

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more than once in the reign of Queen Elizabeth.* Nothing can justify a resort to anything so horrid; but the conspiracies of Papists were endless, as well as of the most alarming kind—and men under the influence of fear are generally cruel, while the party who support administration are too apt not to condemn an illegal act which strikes at enemies of whom they live in constant alarm. During Elizabeth's reign, some Catholics, believed to be engaged in the deepest treason, were put to the rack to extort confession; but the circumstance raised such a clamour against the government that, in 1583, Burghley himself wrote and published a vindication of it, in which he states that the Popish party had exaggerated the matter beyond all bounds; that very few had been racked, and these very gently; and that 'none of them had bene put to the racke or torture, no not for the matters of treson, or partnership of treson, or such like, but where it was first known and evidently probable by former detections, confessions, and otherwise, that the party so racked was guylty, and did knowe, and coulde deliver trueth of the things wherewith he was charged; so as it was first assured that no innocent was at any time tormented, and the racke was never used to wring out confessions at adventure upon uncertainties, in which doing it might be possible that an innocent in that case might have bene racked.'† The excuse is a sorry one, but it proves the real feelings of the age; and, though the period of publication was a critical juncture, Elizabeth herself ordered the practice to be forborn.‡ It was again

* Blackstone's *Commentaries*, vol. iv. p. 325.

† Scott's *Somers' Tracts*, vol. i. p. 211. The paper is entitled, 'A Declaration of the favourable Dealing of Her Majesty's Commissioners, appointed for the Examination of certaine Traytours, and of Tortures unjustly reported to be done upon them for matter of Religion, 1583, by Lord Burghley' (p. 209 *et seq.*).

‡ Camden, p. 497. Books were published about this time, in which the queen's gentlewomen were exhorted to imitate against her the conduct of Judith to Holofernes (*Ibid*). Elizabeth always declared against forcing the consciences of men (*Id.* p. 487). The Popish priests held that whatsoever was done by the queen's authority after the publication of the bull by Pius V. was null, both by

employed after the Revolution, in the time of William III., to extort confession from a state delinquent ; * yet who will say that it was not at that time as repugnant to the feelings of Englishmen as to their laws?

‘Even the council in the marches of Wales was empowered, by their very commission, to make use of torture whenever they thought proper.’ Now, with regard to this, it is only necessary to remark, that this commission was issued by Queen Mary, † a princess whose reign ought not to be quoted ; that, at all events, Wales did not fully enjoy the administration of the English laws, as by 34 Henry VIII. cap. 26, the president and council were empowered to execute justice according to their discretion ; ‡ and that, such was the state of society in that principality, even in the time of Hudson, who wrote either towards the close of James’s reign or in that of Charles, that there was no possibility of obtaining a regular conviction there of any man of a certain rank. §

‘There cannot be,’ continues the historian, ‘a stronger proof how lightly the rack was employed than the following story, told by Lord Bacon. We shall give it in his own words :—‘The queen was mightily incensed against Hayward on account of a book dedicated to Lord Essex, being a story of the first year of Henry IV., thinking it a seditious prelude to put into the people’s heads boldness and faction. She said she had an opinion that there was treason in it, and asked me if I could not find any places in it that might be drawn within the case of treason. Whereunto I answered, For treason, sure, I found none ; but for felony, very many. And when her majesty hastily asked me wherein ? I told her the author had committed very apparent theft ; for he had taken most of the sentences of Cornelius Tacitus, and translated them into

the laws of God and man, and that there was no lawful magistrate in England (*Ibid*).

* Scott’s *Somers’ Tracts*, vol. i. p. 209. Note prefixed by the editor.

† Haynes, p. 196. The instructions were issued in 1553.

‡ *4th Inst.* p. 242.

§ Hudson, p. 14.

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English, and put them into his text. And another time, when the queen could not be persuaded that it was his writing whose name was to it, but that it had some more mischievous author, and said, with great indignation, that she would have him racked to produce his author, I replied, Nay, madam, he is a doctor; never rack his person, but rack his style. Let him have pen, ink, and paper, and help of books, and be enjoined to continue the story where it breaketh off, and I will undertake, by collating the styles, to judge whether he were the author or not.' Thus, had it not been for Bacon's humanity, or rather his wit, this author, a man of letters, had been put to the rack for a most innocent performance. His real offence was dedicating a book to that munificent patron of the learned, the Earl of Essex, at a time when that nobleman lay under her majesty's displeasure. Essex, once the great favourite of Elizabeth, had fallen into disgrace, and from his popularity had become an object of jealousy. At this juncture, Doctor (afterwards Sir John) Hayward published his 'History of the Early Part of the Reign of Henry IV.,' in which he treats almost exclusively of the misconduct and disposition of Richard II., uttering, on so delicate a point, sentiments bold enough to startle princes, and dedicated the work to Essex, whom he addressed in these words—'*Magnus siquidem es, et presenti judicio et futuri temporis expectatione.*'* No wonder that Elizabeth

* Mr. Hume says, in a note—'To our apprehension, Hayward's book seems rather to have a contrary tendency; for he has preserved the famous speech of the Bishop of Carlisle, which contains, in the most express terms, the doctrine of passive obedience. But Queen Elizabeth was very difficult to please on this head.' I conclude from this, that the learned author had never read Hayward's work; for the sentiments are of a very different description from what he supposed. It is true that the Bishop of Carlisle's speech is preserved, and the history would

have been incomplete without it: nay, it is also true that Hayward appears to condemn the deposing of Richard. But the boldest opinions are to be met with in almost every page; and, since Mr. Hume has alluded to the Bishop of Carlisle's speech, of which he himself gives a high character in vol. iii. p. 43, we shall give an extract from another in the same production; being part of Thomas Arundel, Archbishop of Canterbury's, when he instigated the Duke of Hereford to aspire to the crown:—'Our ancestors lived in the highest pitch and perfection of liberty.

was offended ; and, though Mr. Hume has ascribed her resentment solely to the dedication, all cotemporary authorities attribute it to the sentiments as well as to the dedication, which was particularly offensive, from the ambitious designs imputed to Essex, and from another work, questioning her title, having been dedicated to the same nobleman.* It must be admitted, however, that there is a wide difference between the use and the execution of a violent threat, pronounced in a moment of irritation, and therefore much weight cannot be given to her threat of putting Hayward to the rack. Indeed, it appears that she did not soon drop her resentment ; † and therefore we cannot admit that her rage was diverted by Bacon's wit.

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Mr. Hume further remarks, that ' the queen's menace of trying and punishing Hayward for treason could easily have been executed, let his work have been ever so inno-

but we of servility, being in the nature not of subjects, but of abjects and flat slaves.' After depicting the tyranny of Richard, he says, ' The attainment of the kingdom must now be a sanctuary and repose for us both. The like examples are not rare (as you affirm), not long since put in practice, nor far hence to be fetched. The kings of Denmark and of Swedeland are oftentimes banished by their subjects, oftentimes imprisoned and put to their fine. The princes of Germany, about a hundred years past, deposed Adolphus their emperor, and are now in hand to depose their emperor Wincellaus. The Earl of Flanders was, a while since, driven out of his dominions by his own people, for usurping greater power than appertained to his estate. The ancient Britains chased away their own king Carecius, for the lewdness of his life and cruelty of his rule. In the time of the Saxon heptarchy, Bernredus, king of Mercia, for his pride and stoutness towards his people, was by them deposed. Likewise Aldredus and Ethelbertus, kings of Northum-

berland, were, for their disorders, expelled by their subjects. Since the victory of the Normans, the lords endeavoured to expel King Henry III., but they were not able. Yet were they able to depose King Edward the Second, and to constitute his young son Edward king in his stead. These are not all, and yet enough to clear this action of rareness in other countries, and novelty in ours. The difficulty indeed is somewhat, because the excellency is great' (pp. 142, 143).

* Birch's *Memoirs*, vol. i. p. 193. See also vol. ii. pp. 439-447.

† Camden's *Annal.* p. 862. It was held by the lawyers that the work was written with the object of encouraging the people to depose the queen. Sir G. Merrick, one of Essex's party, was in 1601 charged, amongst other things, certainly overt acts of treason, with having caused an obsolete tragedy of the Deposing of Richard II. to be publicly acted at his own charge, for the entertainment of the conspirators (*Ib.*).

CHAP. cent. While so many terrors hung over the people, no
II. jury durst have acquitted the man, when the court was
resolved to have him condemned.' He then makes an
observation about witnesses not being confronted with the
prisoner ; declares that scarcely an instance occurred dur-
ing all these reigns of the sovereign or the ministers having
been disappointed in the issue of a prosecution, and pro-
ceeds thus :—' Timid juries, and judges who held their
offices during pleasure, never failed to second all the views
of the Crown ; and as the practice was anciently common
of fining, imprisoning, or otherwise punishing the jurors,
merely at the discretion of the court, for finding a verdict
contrary to the direction of these dependent judges, it is
obvious that juries were then no manner of security to
the liberty of the subject.' In this there is some truth
mixed up with much gratuitous assumption. In the first
place, the queen made no menace of trying Hayward for
treason, though she evinced great anxiety to have the case
brought within the compass of treason—a fact which of
itself goes far to negative all the historian's unqualified
account of the state of the government, particularly about
the judges, who, by the way, did not, as we have already
observed, hold their places during pleasure, but during
good behaviour. The juries, too, though occasionally
summoned into the Star-Chamber for their verdicts, were
not reduced to such a deplorable condition as the historian
imagined. But, in the next place, we may observe that,
in Elizabeth's time, the judges displayed an integrity
which forms a strong contrast with the conduct of the sworn
guardians of the law during the two succeeding reigns.
Elizabeth's judges put a check upon the proceedings of
the High Commission, and, in spite of the interest used to
have the individual condemned who killed the pursuivant
that attempted to enter his house by virtue of a warrant
from the commissioners, they dismissed him from the bar,
as having only vindicated the rights of an Englishman.
They asserted the privileges of the people in regard to

illegal imprisonments; and they declined to sanction, by their opinion, an imposition laid upon merchandise without an Act of Parliament. The following circumstance, too, is in point:—One Bloss had affirmed that King Edward was alive, and that Elizabeth was not only married to the Earl of Leicester, but had borne four children to that nobleman. Ministers were eager to chastise him; but having found that there was no statute which authorised his punishment, they instantly set him at liberty.*

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‘The power of pressing both for sea and land service,’ continues the historian, ‘and obliging any person to accept of any office, however mean or unfit for him, was another prerogative totally incompatible with freedom.’ Osborne gives the following account of Elizabeth’s method of employing this prerogative:—‘In case she found any likely to interrupt her occasions, she did seasonably prevent him by a chargeable employment abroad, or putting him upon some service at home least grateful to the people; contrary to a false maxim since practised with far worse success by such princes as thought it better husbandry to buy off enemies than reward friends.’ ‘The practice,’ says Mr. Hume, ‘with which Osborne reproaches the two immediate successors of Elizabeth, proceeded partly from the extreme difficulty of their situation, partly from the greater lenity of their dispositions.’ Legally, no one could be sent out of the kingdom against his will; † and though every man was obliged, for the public defence, by law, to provide himself with arms according to his quality, he was not, except in a case of invasion, bound to go beyond his own shire.‡ Everything is, however, liable to abuse, people of influence in the state being too apt to overlook oppression which does not touch themselves; and labourers and artificers were pressed for sea as well as

Impress-
ments.

* Strype’s *Annals*, vol. ii. pp. 240, 241.

† 2nd Inst. p. 47, 48.

‡ 1 Edward III. st. ii. c. 6; 4

Henry IV. c. 13. Prynne’s *Humble Remonstrance against the Tax of Ship-money*, p. 11.

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II.

land service, and sent out of the kingdom ;* but no instance, so far as I know, is adduced of individuals of high rank having been impressed under the Tudors, except the famous one of Alderman Read, in the time of Henry VIII., for refusing a benevolence—an act generally condemned as tyrannical. Had such cases occurred, however, under Elizabeth—as the persons must have been men of note to interrupt her occasions—they would doubtless have been handed down to us. With regard to the assertion of Osborne,† unvouched by cotemporary or any

* In ancient times, 'knights or gentlemen expert in war, and of great revenues and livelihood in their country, covenanted with the king to serve him in his war, for such a time, with such a number of men: and the soldiers made their covenant with their leaders or masters, and then they were mustered before the king's commissioners, and entered of record before them; and that was certified into the Exchequer, and thereupon they took their wages of the king, as it appeareth by many precedents of the Exchequer, and may be gathered by the preamble and body of the Act' (5 Richard II. c. 11), &c. (Coke's *3rd Inst.* p. 83, c. 26). This also appears by 1 Henry VI. c. 5, in regard to the soldiers of Henry V.; by 18 Henry VI. cc. 18 and 19; 7 Henry VII. c. 1; 3 Henry VIII. c. 5. This fell into desuetude, and pressing commenced. The fact appears to have been, that anciently men were raised by the influence of the aristocracy; and that this influence, together with the number of the unemployed, gave subsequently rise to impressments, which were never legal. Sir Edward Coke informs us (*Ib.*) that those only could be lawfully conveyed out of the kingdom as soldiers who received the king's press-money, which I presume was a bounty for such service. But it is plain that after men were enrolled, they would require very little inducement to go abroad.

Mr. Hume says, that 'when any

levies were made for Ireland, France, or the Low Countries, the queen obliged the counties to levy the soldiers, to arm and clothe them, and carry them to the sea-ports at their own charge.' I am not prepared to contradict this; but I wish that the learned writer had given his authorities for such an assertion, for I am not at present aware of the existence of such a practice in Elizabeth's reign, and if such there were, it was directly against law. Such a thing had been done in the time of Edward II., a prince dethroned for alleged misgovernment; but by 1 Edward III. stat. ii. c. 7, it was repressed. This statute was confirmed by 4 Henry IV. c. 13. The city of London in 1558 levied ten thousand men, whom they armed and clothed; and they afterwards likewise raised another thousand; but these appear to have been voluntary acts, in the same manner as their fitting out of ships against the armada was (Maitland's *Hist.* p. 273 *et seq.*).

At the time of the northern rebellion, too, the shires raised men (Haynes). But then invasion was apprehended, and in the time of rebellion, all the Protestant party were too zealous to stand upon legal rights.

† Osborne died in 1650. He was originally a courtier in the time of James I. and Charles; he afterwards became a parliament man, but rose to no distinction.

authority, it is little to be regarded. A writer of the present age, of no great ability, like Osborne, who should make a general assertion of what had happened fifty or a hundred years back, would not be entitled to much credit; and, luckily, the accuracy of this author, in regard to Elizabeth's reign, can be brought to the test. In some sentences immediately preceding the passage quoted by Mr. Hume, Osborne says that Elizabeth called parliaments often, and that 'it was not the guise of those times to dissolve them in discontent, but to adjourne them in love.' 'And,' says he, 'it is no less remarkable that, in so long a reign, she was never forced, as I have heard, to make use of her negative power, but had still such a party in the House of Lords as were able to save her from that trouble.*' Now, it may be observed that this alleged good correspondence with her parliaments is not altogether consentaneous to the idea of her having sent upon expensive employments abroad leading men from whom she dreaded opposition; but the statement is incorrect, for on one occasion she sharply rebuked the Commons on dissolving them. And with regard to her never having been forced to make use of her negative power, it is only necessary to state that, in the 39th of her reign, she refused no less than forty-eight several bills which had passed both houses.† But it is indeed extraordinary to find both Osborne and Hume giving so different a character to the government of Elizabeth's two next successors (Osborne's may partly be ascribed to the general indignation excited by the favour shown to Wentworth, afterwards Earl of Strafford, for becoming a creature of the court), since it could not be unknown to them that, in the year 1621, some of the most distinguished members of the Commons were sent abroad by James on the most frivolous pretences, because they discharged their duty in parliament; that, in the year 1623, a citizen of London was by the same monarch ordered to

* Osborne, pp. 389 and 391.

† D'Ewes, p. 596.

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carry a despatch to Ireland, because he refused to comply with a demand of a benevolence, a species of imposition never attempted by Elizabeth;* and that Charles I. carried his tyranny in this respect to the most odious height.

The historian has justly observed, that men of inferior rank often abused the power of pressing, as officers frequently exacted money for freeing persons from the service. But, however great the grievance was—and it undoubtedly was an enormous one—it may fairly be questioned whether it ought not rather to be ascribed to the state of society than to the uncontrolled power of the Crown. The only instance given by Mr. Hume proves the readiness of the queen to afford redress to the sufferers the instant the fact reached her ears.

Forced
loans.

Forced loans and benevolences are, by Mr. Hume, numbered amongst the arbitrary engines of government possessed by Elizabeth, though that princess never attempted the latter illegal mode of raising money. Forced loans were as directly against the principles of the constitution as any tax without the assent of the legislature. But the evil could not be so easily repressed; since, while the request of a prince, especially in disorderly times, is too apt to degenerate into a demand, the illegality of the measure was sheltered under that pretext; and people in general were not likely to dispute the request to lend small sums for a short time, though they lost the interest upon the ground then current and established by law, that it was unjust to take anything for the use of barren money. The lender, however, could not recover his money by any legal process, and a dishonourable prince might defraud him. Accordingly, this formed one of the charges against Richard II., and parliament *generously* liberated Henry VIII. from repayment of his loans, which, however, might be borrowed at interest. Elizabeth frequently borrowed large sums of money at the enormous rate of 14 per cent.;

* Rush. vol. i.

and as, while she borrowed at such a charge, she appears to have applied only twice (Mr. Hume says *often*) to her subjects, on the most momentous occasions too, and for a short period, for loans in an irregular way, we may safely conclude that, had it been carried farther, the temper of the kingdom could not have submitted to the grievance. The first occasion on which Elizabeth resorted to this mode of raising money was upon the northern rebellion; and it will be perceived from the warrant, a copy of which is to be found in Haynes' Collection, that it is in the form of a request, and that the lenders are assured of repayment within twelve months. The measure was justified on the principle of necessity, as treasure 'now, without parliament, cannot be had but by way of loan,' and it was said that 'the prince is not here the borrower, but God and our naturall cuntry.' The influence of the Crown in the country was at this time very great, in consequence of the number that had obtained a share of the church lands; and the request does not appear to have encountered opposition there amongst the higher ranks, while, says Mr. Bertie, in a letter to Secretary Cecil, 'the perverse in this' (the lower) 'rancke shall be, by shame, constreyned to contribute with their goods.'* At the year's end the queen was not, owing to the great expense incurred, in a condition to repay the money, and therefore she thus instructed the collectors 'to use all good meanes, ether by your letters, or by your conference with the partyes that have so lent to us any monny, as for the reasons above sayd, and at our request they will be content to forbear the demand of their monny from the daye the same is or shall be due, for the space of seven monthes; at which tyme, or before, you may assure to them an undoubted payement, for so we have fully determyned by advise of our counsell to perform the same.' She concludes by saying that, 'as the lenders had given her cause to think well of them by their readiness to lend, she hoped they

* Haynes, pp. 518, 519.

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would give her reason to increase her good opinion by forbearing their demand according to her request.* This was the identical loan which gave occasion to the historian for the following statement:—‘There remains a proposal made by Lord Burleigh for levying a general loan on the people, equivalent to a subsidy; a scheme which would have laid the burthen more equally, but which was, in different words, a taxation imposed without consent of parliament.’ Now, there is no further proposal in the case than an order for letters of privy seal. Yet the author referred to compares this, *which he says was ‘proposed without any visible necessity,’* to the imposition of a sixth part of men’s goods, attempted by Henry VIII., which, enormous in itself, was not even to be repaid, and to the after exactions of Charles I., who was, says the historian, ‘enraged by ill usage from his parliament.’ But what sets this in a different light is, that, though the queen succeeded in the counties, where there was less public spirit and greater court influence, she failed in the metropolis; for the citizens refused to lend, and she borrowed 16,000*l.* at the rate of 6 per cent. for six months, or 12 per cent. per annum, granting at the same time a discharge from the statute of usury. At the end of the six months she was unable to refund the money, and prolonged the term of payment for other six months, with 6 per cent. more, besides brokage. It is curious, too, that Mr. Hume elsewhere states the fact of her having borrowed from the city, through the influence of Sir Thomas Gresham, and yet he totally overlooked the date of the loan, as well as the refutation which it carried with it of his own statement; since, if Elizabeth could have borrowed without interest, she would not have paid for the loan at so enormous a rate.† The other loan raised by Elizabeth was

* Murden, p. 181.

† Stow’s *Survey*, by Strype, vol. i. p. 283. The first writs to the citizens were for twelve months, and I presume without interest, as there is

no mention of it (Haynes). Stow, while he specifies the rate of interest on the loan of 1569, does not distinctly give us to understand that interest was not paid in 1588; but

immediately after the defeat of the Spanish armada, when vigorous preparations were still deemed requisite against any after attempt: then it was that the mayor of London officiously imprisoned some citizens for refusing to lend.* But the season was fit for an illegal proceeding. From the extraordinary charges to which the government had been put, and the treasure still requisite, necessity seemed to justify such a loan; while the victorious triumph over the Spaniards threw into the shade the irregularity of the means employed to compass the object.

‘The demand of benevolences,’ says Mr. Hume, ‘was another invention of that age for taxing the people. This practice was so little conceived to be irregular, that the Commons in 1585 offered the queen a benevolence, which she very generously refused, as having, at that time, no occasion for money.’ By the fundamental principle of the constitution, confirmed by magna charta, &c., money could not at any time be exacted from the people without an Act of the legislature; but Edward IV., taking advantage of the particular state of affairs, two years after the battle of Tewkesbury, and just on the eve of a war with France,† when the kingdom had been rent with civil dissension, and his power, upon the reduction of his adversaries, was great, instead of summoning a parliament

Benevo-
lences.

from the opposition the loan met with, I suspect it. In 1589 she borrowed 15,000*l.* at 10 per cent., but that could not in any view be called compulsory. Stow gives a list of loans by the city. The first he mentions was to Edward III., when he had resolved on an expedition to France, and had obtained a tax to enable him to undertake the expedition. The citizens lent 20,000 marks, which were to be repaid out of the parliamentary grant. In the year 1644, Henry VIII. borrowed from citizens 21,263*l.* 6*s.* 8*d.* upon lands mortgaged to them. The principal lenders were knights, and the rest were knighted for their loyalty.

In 1551 the city became bound with Edward VI. for repayment of a loan from some bankers at Antwerp (pp. 281, 282). The next was that mentioned in 1569. All this is to be found in the very place referred to by Mr. Hume, when (p. 476) he tells us that Sir Thomas Gresham engaged the company of merchant-adventurers to grant a loan. Stow says that divers merchants and aldermen were lenders.

Elizabeth also, on extraordinary emergencies, lent money to the citizens (*Ib.*).

* Murden, p. 632.

† Ilabington in *Ken.* p. 461.

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II.

from which he might ask a benevolence (from time immemorial every legislative grant has passed under that name), directly applied to the people, pretending that he demanded nothing of right, but appealed to their generosity. The people, however, considered his request as approaching to a demand,* and resented it so deeply that the device was urged by the Duke of Buckingham, in his discourse to the citizens at Guildhall, as a proof of the oppression practised by Edward, and as a reason for not permitting respect for that prince's memory to prevent their setting aside the succession of his children.† Richard III. himself, with both houses of parliament, by stat. i. c. 2, of that prince, stigmatised it not only as illegal, but as an act of the grossest injustice and oppression. Henry VII., whose situation in regard to the influence of the Crown has been already described, had, in 1492, resolved upon something of the kind, leviable at a certain rate, but the people resisted it till parliament lent its authority to the particular tax proposed.‡ In 1505 he repeated the measure successfully without the interposition of the legislature.§ His son and successor, instigated, as it is alleged, by Cardinal Wolsey, attempted to levy money without an Act of Parliament; but violent symptoms of rebellion obliged him to recall the warrants and disavow the measure, when he declared that he meant only to appeal to their goodwill, not to ask anything of right.||

* In the *Croyland Chronicle* it is said—'*Inducta est nova et inaudita impositio muneris, ut per benevolentiam quilibet daret id quod vellet, imo verius id quod nollet*' (*Hist. Croylandensis Continuatio*, p. 588). We are informed by this writer that Richard violated the statute himself, by exacting a benevolence, which the people called a malevolence (*Id.* p. 571). But the fact is not mentioned by other writers. Even Bacon tells us that the benevolence was devised by Edward IV. (*Hist.* p. 602.)

† See More's *Hist.* in *Ken.* p. 498; Halle, f. 20; Holinshed, p. 728.

‡ See st. 11 Henry VII. c. 10.

§ Bacon's *Hist.* pp. 602, 631.

|| Herbert, pp. 66, 67; Holinshed, p. 891; Halle, fol. 138. This contemporary writer tells us that people 'saied, if men should give their goodes by a commission, then wer it worse than the taxes of Fraunce, and so England should be bond and not free.' Yet Mr. Hume could not discover any proof of the English being sensible of any superiority in their government. Halle is supposed

In the year 1546, when the Reformation had so greatly extended the influence of the Crown, Henry a second time resorted to this unlawful way of raising money; but, though he sent Alderman Read to Scotland, and practised severities against others for refusing, it is extraordinary—and the fact has escaped historians—that he was obliged to apply to parliament for its authority to levy the sums proposed. As a statute was passed at his request, the demand ceased to be irregular.* Nothing of the kind was ever afterwards attempted by the house of Tudor. Thus, anterior to the dynasty of the Stuarts, there had been only five attempts at benevolence, of which two obtained the authority of parliament, and consequently became legal taxes.

As on this subject of real importance to the political history of the country, Mr. Hume has successfully led public opinion, the reader will deem a strict scrutiny of that celebrated writer's statements no trespass upon his patience. In treating of the benevolence levied by Edward IV., he says—'But, as the king deemed these sums unequal to the undertaking, he attempted to levy money by way of benevolence, a kind of exaction which, except during the reigns of Henry III. and Richard II., *had not been much practised in former times*, and which, though the consent of the parties was pretended to be gained, could not be deemed entirely voluntary.' In the apparent support of this statement, there is an array of references, whence the natural conclusion is, either that the whole of it was warranted by them, or that he had alluded to the practice of former times, from having himself adduced instances of it in the preceding parts of his history. The conclusion is, in both respects, erroneous. All the writers,

to have been born about the last year of the fifteenth century. He was a lawyer, became a serjeant, and was likewise a member of parliament. He died in 1548 (Chalmers's *Biog. Dict.*)

* The commission for the benevo-

lence is dated January 5th, 1546 (Rym. *Fœd.* vol. xv. p. 84), and the statute was passed the same year (37 Henry VIII. c. 25, sects. 23 and 24), and printed in the late publication of *Statutes of the Realm*, vol. iii. p. 625.

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II.

with the exception of Fabian—and his language likewise implies it—pronounce, in the most direct and explicit terms, the benevolence by Edward IV. a new device. No instance is in the ‘History of Richard II.’ insinuated by the author himself against that king; and, though in his ‘History of Henry III.,’ it is said that ‘Henry demanded benevolences, or pretended voluntary contributions, from the nobility and prelates,’ the assertion derives little support from the only authority to which he refers, or from any other. Henry’s long reign was full of civil dissension, and marked with many violations of public rights which he was obliged to acknowledge, and solemnly to swear never to repeat.* He was guilty of extortion, not only from the Jews, who appear to have been thought lawful prey, but from the citizens of London, whose pardon afterwards he was forced to beg with tears in his eyes.† It is even alleged, that some of his household were freebooters, and that he shared in the spoil.‡ Having reduced himself to great straits, and disposed of his very plate and jewels,§ he summoned a parliament; but that assembly, far from relieving his wants, assailed him, as usual, with the most bitter reproaches. Disappointed in his hopes of procuring money from them collectively, he endeavoured to obtain it by applying to them individually, promising each a return of favour, pleading his debts, and even feigning that he meant to make war with France. But his request was received with every mark of contempt and scorn.|| Turning from the barons, he applied to the ecclesiastics, to whom he used the miserable whine of a mendicant, declaring that it would be greater charity to assist him than the wretch who begs from door to door. ‘*Asserens majorem eleemosynam fore sibi juvamen conferre pecuniare quam alicui ostiatim mendicanti.*’ But, with the

* M. Paris; Cotton’s *Short View*; Daniel in *Ken.*; Henry, vol. vii. b. iv. c. 1.

† M. Paris, pp. 657, 670.

‡ Henry, vol. vii. p. 18.

§ M. Paris, p. 650.

|| *Id.* p. 657.

ption of two abbots, he was not more successful with body.* In this part of Mr. Hume's work, as elsewhere, we encounter bold assertion. He roundly states this and other practices were uniformly continued by Henry's successors.†

In another place,‡ he argues that the legislative enactment which empowered Henry VII. to levy *one* benevolence, indirectly established the general principle in favour of the Crown. But with equal justice may it be said that a statute which imposes one tax for the public expenses, implies a power in the sovereign to assess the people at discretion. The statute of Richard III. was not negated by that in favour of Henry VII., and the existence of the latter fully imports the understanding of both king and people, that money could not be, in this way, more than by an ordinary subsidy, legally raised without the intervention of parliament. Mr. Hume's view has, however, the merit of originality. Wolsey contended that Henry VIII. was not bound by the statute of Richard III., because it was passed under a usurpation; yet, though a pretext for injustice was eagerly hunted after, the ingenuity of Henry's adviser never started such a plea. Nor was the Stuart family more successful.§

[L. Paris, p. 658. Daniel in i. 179.

[Hist. vol. ii. pp. 165, 166.

ol. iii.

Mr. Hume has, with more plausibility, quoted a passage from *Cottington's* *Abridgment* in regard to loans; in the 2nd of Richard II. it is enacted that, when a loan was demanded, 'such as have *reasonable* cause for not lending may there be excused without farther summons, penalty, or grief.' 'By this law,' says Hume, 'the king's prerogative of compelling loans was ratified, and ought to be deemed a *reasonable* cause was still left in his own hands to determine;' but had he attended to what occurred immediately after see *Records*, pp. 193, 194), he

would have discovered his mistake of the meaning. For *parliament* endeavoured to procure a loan in the 5th of that prince from the merchants; but they refused, and it was not pretended that there was any law to compel them. This might have led the historian to consult the full rolls of parliament as printed in 1767 by order of the House of Lords; and there he would have discovered that in the 25th of Edward III. loans were ordered to be repaid, and it was enacted that none should be compelled to lend '*quar ceo est contre raison et la franchise de la terre*' (*Rot. Par.* vol. ii. p. 230, No. 16). That, even in the very case referred to, it is said that letters of privy seal had been issued, and that those who re-

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'The Commons' (*his own authority calls it the parliament*), 'in 1585,' says Mr. Hume, 'offered Elizabeth a benevolence, which proves that it was little conceived to be irregular.* Now, as the grand, the only objection to what *in common speech* is termed a benevolence, arises from its being a real extortion under the pretext of a voluntary gift (for, were the practice to prevail, individuals would be exposed naked to the influence and indignation of the Crown), it is utterly impossible to conceive upon what ground a legislative grant, pregnant with no injustice to any particular class of the community, could, under one name, be more repugnant to the theory or spirit of the constitution than under another. Against such a species of benevolence the law of Richard III. neither was, nor could be, directed; for parliament ever continues to be invested with the same power, and its acts must, therefore, be equipollent. But had this author bestowed a little more investigation on the subject, he would have discovered that the word 'benevolence' had, in parliamentary and common language, totally different meanings—importing in the first, an ordinary legislative supply to the Throne; and in the other, a species of extortion at the mere will of the prince. So deeply rooted is the first meaning, that, from time immemorial, the assent of the sovereign to a money bill has been thus expressed in Nor-

fused to lend had been threatened and commanded to appear before the council, 'a grande damage et affraye des ditz povres Cœs. et ensclandre du roi, et encontre la love de la terre' (vol. iii. p. 62, No. 30, 2nd Richard II). Now, since compulsory means were reprobated as against the law of the land, and an excuse was to be received without further summons, travail, or grief, it is perfectly evident that it remained with those applied to, not with the king, to determine whether the excuse was reasonable, for the sovereign had no way to ascertain whether it were so or not. Had the enactment been capable of

Mr. Hume's construction, it would have been used by the Crown not only three years afterwards, but at a later period, to justify a measure condemned as illegal. By the way, we may be pardoned for a single word about what is called Cotton's *Abridgment*. It was published by Prynne in 1657, and is alleged to have been made, not by Cotton but by Bowyer, keeper of the records, about the end of Elizabeth's reign. It is valuable, but not complete, nor always accurate (see preface by Raithby to the first volume of his edition of the *Statutes*, p. 23).

* *Hist.* vol. v. p. 460.

man French : 'Le roy, or la roigne, remercie ses loyaulx subjects, accepte lour benevolence, et aussi le veult.'—'The king, or queen, thanks his or her loyal subjects, and wills it to be so.'* Let us now take the passage founded on by Mr. Hume, which is part of a speech by Sir Robert Cecil, in the year 1592 or '93, and we shall probably perceive small cause to infer that there had been any irregular offer of money. A very large supply, according to the opinion of those times, had been moved for; and many contended that it would form a precedent for future grants prejudicial to the nation. Sir R. Cecil, then secretary of state, in order to remove this apprehension, observed that, 'In her Majesty's time, it was not to be feared that this precedent would ever do them harm, for her Majesty would never accept anything that was given unwillingly. Nay, in the *parliament* the 27th of her reign, she refused a benevolence offered her, because she had no need of it, and would not charge her people.'† Now, on a strict examination of the journals for the year 1585, nothing of this kind appears; and the only occasion on which she declined an offer of money was in the 9th of her reign, when she remitted the third payment of a subsidy *tendered by bill in ordinary form*, alleging that she had no need of money at that time, and that it was better in her subjects' pockets than her own, though her real motive was to evade a condition of marriage on her part, which the gift imported.‡ To this, then, must we presume that Sir Robert referred; and we do it with the greater confidence, because we are informed by the editor of the 'Journals' that the speech founded on by Mr. Hume was extracted, not from the original Journals of the house, but from an anonymous Journal (taken by some member), which he had in his possession, and it is easy to conceive that an error of a date may have crept into it. But

* Blackstone's *Commentaries*, vol. i. p. 184; D'Ewes' *Journals* at the end of every session, House of Lords.

† D'Ewes' *Journals*, p. 494.

‡ D'Ewes' *Journals*, p. 131; Camden in *Ken.* p. 400.

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perhaps the word 'benevolence' may still startle the reader, since there may reasonably be supposed a difference betwixt a formal and unvaried response of the sovereign, and the common language of the two houses of parliament. To remove this impression we may observe, that upon a strict investigation of D'Ewes' Journals from beginning to end, we have discovered that the word 'benevolence,' employed to denote a regular legislative grant, occurs not seldomer than twenty times.* Nay, in reference to that very subsidy which Cecil was strenuously endeavouring to obtain, and to which his speech related—the word 'benevolence' is used four times, once by the secretary himself.† Nor should the double meaning of the word be

* In the first year of her reign, Sir Thomas Gargrave, speaker of the House of Commons, in his speech to the Throne at the conclusion of the session, 'desired in the name of the house that her majesty would be pleased to take in good part the *free* gift of her subjects, who, in token of their love and zeal to her majesty, did *with one assent* offer unto her not only the *subsidy* of tonnage and poundage, but likewise *one subsidy and two-fifteenths and tenths*' (D'Ewes' *Journal*, p. 31). Sir N. Bacon, then lord keeper, returned warm thanks at the desire of her majesty, and calls the grant a liberality and benevolence—using the latter word to denote supply five times (p. 32). In the 5th of the queen, the same lord keeper again styles the supply a liberality and benevolence, and, as he had done before, talks of the Commons' benevolent minds (p. 75). In the 13th of the queen, the same lord keeper, on returning thanks for the subsidy, calls it a benevolence seven times (p. 151), talks of their benevolent minds, &c. In these instances the word is used without the least formality. In the 18th, he speaks 'of the grant of a subsidy,' and styles it a benevolence three times. He also talks of their benevolent minds (p. 234).

† On Friday, the 2nd of March, Sir

Robert Cecil states that the committee of the House of Commons had a conference with the committee of the House of Lords (a thing, by the way, keenly opposed by many, as tending to infringe the liberties of the Commons), about a supply, and he says that 'their lordships will not give in any wise their assent to pass any Act in their house of *less* than three entire subsidies to be paid, &c. And that to what proportion of benevolence, or unto how *much* their lordships will give assent in that behalf, they would not as then show unto the said committee of this house.' The Lords insisted for further conference, but this was opposed by Bacon and others. The proposed grant was generally called a subsidy, and it is so called by Cecil himself' (p. 483). In page 484, the word 'benevolence' occurs.

Amongst those who thought a conference with the Lords much prejudicial to the ancient liberties and privileges of this house, and to 'the authority of the same,' was Mr. Beale, who 'insisted upon the preservation, and maintenance of the former usual and ancient liberties and privileges of this house in treating of subsidies, contributions, and other like *benevolences* amongst themselves' (p. 485.) All the influence of ministers to procure a conference with

er of wonder ; for subsidy had also two significations, being in one sense a general grant of money in what-shape ; in another, a specific assessment : so that sometimes one subsidy was given, with tenths and fifths ; at others, two, three, four, and so on. A supply likewise called a free gift, a free grant, a contribution. Having cleared up this subject, and displayed upon a sandy foundation the historian builds, it will be better to mention, that the two houses of parliament did, in the year 1586, depart from the regular course, by consulting amongst themselves a certain sum for the pur-

ports failed at this time, on the traditional ground stated, and the passing passage of the *Journals* is added to much notice:—‘It having already overruled by the house, there should be no conference held with the Lords touching matter of the *subsidy*, which their lordships had desired, it was there-ordered, upon a motion made in house, that some answer might be sent from thence to their lordships to satisfy them touching said motion for conference ; for in respect the said conference had already denied, and had been to be prejudicial to the liberties of the house by the judgment of me, that a convenient number of the house should be appointed pre- sents, in the name of this whole house, to give unto their lordships most humble and dutiful thanks for their lordships’ good, favourable, and gracious offer of conference, &c., to signify unto their lordships that this house cannot in those cases of *BENEVOLENCE* or *contribution* join in conference with their lordships, without prejudice to the liberties and privileges of this house, and of the king of the same.’ They there-fore to be excused : ‘for that so they assented without a bill had contrary to the liberties,’ &c. (p. 491). A conference, however, was held on Monday, the 5th March, touching the great and imminent

dangers of the realm and state, and the present necessary supply of treasure ;’ and Mr. Vice-Chamberlain, in reporting, as one of the committee, the substance of what passed, says—‘It was in the end, after sundry speeches of divers grave members of this house, tending to divers forms of provision of treasure, some by way of *treble subsidies and like proportionable fifteenths and tenths*, and some by other sorts of *benevolence*, resolved,’ &c. (p. 491). Now, it is worthy of remark that this took place on the 7th of March 1593, while Sir Robert Cecil made the speech on which Mr. Hume founds his statement upon the 2nd of that month. The difference of sentiment in regard to the supply arose from the desire of many to relieve the lower ranks ; but all the plans were strictly regular. The famous Bacon assented to three subsidies, but not to the payments under six years ; and against the supply granted, he urged the impossibility of raising it on the one hand, and the danger of discontent on the other ; and, lastly, the *danger of the precedent*. ‘This being granted in this sort, other princes hereinafter will look for the like ; so we shall put an evil precedent upon ourselves and our posterity : and in histories, *it is to be observed that of all nations the English are not to be subject, base, or taxable*’ (p. 493).

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pose of assisting her majesty in her wars in the Low Countries.* Their object was to aid the sovereign without burthening the inferior classes, who groaned under the load of taxation; and who shall dare to censure this manly act, because they unanimously performed it without the formality of a bill, entertaining no groundless cold-hearted fears of danger from the precedent? Has there ever been, or is there now, any principle, either in the theory or spirit of the constitution, to blast such generosity? And, instead of indulging in absurd deductions against those times, ought we not to lament that the precedent of that assembly has been lost upon their successors? But, lest it should be imagined that Cecil alluded to this contribution, it may be again observed that her majesty thankfully received it. The clergy, in convocation, also granted one, which was not confirmed by Act of Parliament.† The resolution of the Commons, in the 4th of Charles I., affords additional proof in support of our statement:—‘That it is the ancient indubitable right of every freeman, that he hath a full and absolute property in his goods and estate; that no tax, tallage, loan, *benevolence*, or other like charge, ought to be commanded or levied by the king or any of his ministers *without common assent by Act of Parliament*.’‡

* D'Ewes, pp. 386, 387, 390.

† The grant by the clergy, though in convocation, was more questionable, because it was leviable upon the whole clerical body, instead of being a contribution by the individual members of convocation, and yet was not regularly passed into a law (Strype's *Life of Whitgift*, p. 261 *et seq.*; *Annals*, vol. iii. p. 405). It cannot be unknown to the reader, that the practice was for the convocation to offer a subsidy, and send it under the royal hand and seal to the Commons, as a money bill, for the approbation and sanction of the legislature (see D'Ewes, *passim*, particularly pp. 229, 615, 688). This was omitted; but no objection to

the payment had been made by the clergy, and parliament, which, we may readily suppose, would not have refused its assent, never interfered. This precedent was afterwards taken advantage of by Laud, in 1640, as we shall afterwards see—a proof of its unusualness (*Troubles and Trial*, &c. p. 80). The clergy were likewise assessed at this time with a charge of troops for the Low Countries, which was doubtless illegal: but they did not stand upon legal rights with their patroness (Strype's *Annals*, vol. iii. p. 406 *et seq.*).

‡ The following passage, extracted from a letter of Mr. Jos. Mead to Sir Martin Stuteville, May 14, 1625 (Ellis's *Cod.* vol. iii. pp. 192, 193), throws

‘Queen Mary, also,’ says Mr. Hume, ‘by an order of council, increased the customs in some branches, and her sister imitated the example.’ Magna Charta, which merely confirmed the common law, expressly provides against everything of the kind; and so firmly was the principle established, that there does not occur an instance of any imposition on merchandise having passed without being complained of in parliament as a grievance, and being redressed; nor even of any attempt to impose, from the time of Edward III. till the 4th of Queen Mary—a period of nearly two hundred years.* The military achievements of Edward III. gave him great influence in such an age, and he availed himself of his popularity to impose new duties on commerce; but parliament never permitted anything of the kind to pass unnoticed, and he, far from pretending to the power of imposing, adopted the readiest way to recover his popularity, by recalling the measure, applying in the regular form for subsidies, and thankfully accepting of them as gifts—thereby directly disclaiming the idea of exacting anything as a right.† Queen Mary, who revived a practice which had been so often reprobated and repressed, and so long unattempted, did not arrogate the right of imposing, but evaded the law, which she did not venture avowedly to break. The custom of wools had, in consequence of the improvement in the English manufactures, greatly decayed, as, instead of the raw produce, much woollen cloth had been exported; and the same quantity of wool which, in its raw state, would, owing to later duties, have paid 40s., was, when wrought up, chargeable with 4s. 8d. only. The regulation was calculated to promote English manufac-

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The power
to impose
customs,
&c.

some light on this topic. It would appear that a notion was entertained of its being irregular to pass laws prior to the coronation, and that, as Charles desired money and was to summon parliament, there was considerable consultation on the subject; ‘and,’ says the writer, ‘yet some talk of a

parliamentary contribution, if not in the full nature, yet in the name of a benevolence, which may be agreed upon without a session or royal assent, as not having the nature of a compulsive statute,’ &c.

* *2nd Inst.* p. 61.

† *Id. Mag. Chart.* c. 30.

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tures; but Mary (whose government should never be cited as illustrative of the ancient constitutional principles), alleging that the wool was liable for the duty in whatever shape it was exported, and being then engaged in a war with France, and much in want of money, laid an additional assessment upon the cloth, which, however, did not nearly equalise the duties.* She died the next year, and a loud clamour against the imposition was raised by the merchants in the 1st of Elizabeth. That princess assembled the judges to deliberate upon the measure and give their opinion upon its legality; but, though her successors readily obtained both judicial and extra-judicial sanctions to their extortions, it was to the credit of Elizabeth that her judges would not prostitute their office by an opinion in her favour;† while all the great lawyers, including Plowden, openly condemned the tax as altogether unconstitutional; nay, Plowden composed an argument against it.‡ She herself did not pretend to any right to alter the customs, but rested her plea entirely on the equity of the thing, arguing that, though it did not fall within the words, it did within the spirit of the laws in regard to wool, and therefore ranked it under the old customs to disguise its illegal origin. With this, possibly, the merchants were satisfied, and parliament, with the nation at large, then occupied with the most important affairs that can engross the attention of any state, and perceiving no disposition to extend the precedent into a right, permitted the illegality of the measure

* Treatise by Sir Mat. Hale, published in Hargrave's *Tracts*, part iii.; Mr. Hackwell's *Argument against Impositions*, 4th James I.; Howel's *State Trials*, vol. ii. p. 453. Aliens paid higher duties; but, as the illegal assessment was proportional, I did not conceive it necessary to specify the rates (see the whole of the *Great Case of Impositions*, in 4th James I.; Howel, vol. ii. pp. 371-534).

† Dyer's *Reports*, pp. 164, 165. 'It was complained of by the merchants,' says Dyer, 'with great exclamation, and they sent to the queen to be unburthened of it, because it was not granted in parliament' (*Ib.* Strype's *Annals*, vol. i. p. 15).

‡ Hargrave's *Observations on the Great Case of Impositions*, 4th James I. in Howel's *State Trials*, vol. ii. p. 378 (see also p. 454, and Preface to Hargrave's *Tracts*).

to fall into oblivion. Even in Philip and Mary's reign the right to impose was directly questioned, and the judges decided against the Crown. The town of Southampton obtained an exclusive grant by letters patent to import Malmsey wines, and all others were prohibited under the pain of treble customs—a mere device to raise the duties. But when the matter was tried in the Exchequer, upon an information by the attorney-general against certain merchants, 'two points were,' says Sir Edward Coke, 'resolved by all the judges: 1, That the grant made in restraint of landing of the said wines was a restraint of the liberty of the subject against the laws and statutes of the realm; 2, That the assessment of treble custom was merely void, and against law: as it appeareth by the report of the Lord Dyer, under his hand, which I have in my custody.*' There occurred in that reign, however, another instance of evasion of the law. On the breaking out of the war with France, she prohibited intercourse with that country—a measure that might have been proper in itself, had she not evinced that it proceeded from an improper motive, and then allowed it to those who procured a license to trade at a certain rate of duty on the articles imported. Elizabeth pursued the same course in regard to sweet wines on the war with Spain. The injustice of both queens is sufficiently manifest from these instances; but, independently of the judgment against Mary, and the legal opinions in the next reign, the very subterfuges to which they resorted afford the best evidence of the feelings and understanding of the age on that subject.†

* *2nd Inst.* p. 61. Bacon, in his defence of Elizabeth's government against a libel in 1593, alludes to this imposition; but though in the next reign he argued for the right to impose, he did not in this.

† *2nd Inst. Mag. Ch.* c. 30; *De Tal. non Conced.* c. 1; *4th Inst.* pp. 29, 30, 31, 112; Hargrave's *Tracts*; the *Great Case of Impositions*, in

Howel, vol. ii. Mr. Hume quotes triumphantly the treatise by Sir John Davies on impositions; but it is well known that this lawyer wrote the treatise from very unworthy motives, as did Bacon another at the same time. The argument by Davies is so extraordinary that, since it has been so much relied on by Hume, we shall be excused for giving an

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Embargoes
on mer-
chandise.

'Embargoes on merchandise,' says Mr. Hume, 'were another engine of royal power by which the English

abstract of it. We shall premise, however, with mentioning that Davies expressly states that no imposition by prerogative had been attempted from the time of Edward III. till that of Queen Mary. '*True it is,*' says he, '*that during the reign of these princes*' (the successors of Edward anterior to Mary) '*we find no impositions directly set upon merchandise by their absolute power or prerogative*' (c. 17). His argument is to this effect: The subject is to be judged by the law of nations, which the common law acknowledges, and which existed before the common law. The civil and canon law, however, form part of the law of nations, and these allow the prince to levy impositions at will. But all absolute princes, according to Fortescue, are equal (by the way, Fortescue's whole statements are repugnant to the most distant idea of absolute power being lodged in the King of England); and, as the King of England has equal power with other monarchs, he has a right to impose. This may be inferred from his other prerogatives, which are of a higher description—as the power of making peace and war, prohibiting the subject from quitting the kingdom, laying embargoes, &c.—but it would be strange if the greater power were given and the less withheld; therefore we may infer that he enjoys the power to impose. The king has a right of property in the ports, which are called his, and consequently may lay impositions upon the trade of those ports which are his own. He is the fountain of justice, and bound to administer it to merchants. But this cannot be done without expense; therefore he may indemnify himself. He is obliged to protect commerce; and as that cannot be done without cost, so he justly lays impositions to meet the outlay. And with regard to the greatness of the power, that affords no argument against it, since

he has greater—even the appointment of the judges. The nature of customs appears from the name, and the records admitting them appear to be anterior to the statutes; ergo, they were imposed by prerogative. As for the various statutes which seem to limit the prerogative, they are of no force, *because the prerogative cannot be restrained*. Edward I. laid impositions, and though the Commons complained, he remitted them of mere grace. Edward II. took a new custom in the beginning of his reign; but being a weak prince, and overruled by his barons, consented to abolish all impositions not given by parliament. Edward III. imposed many duties by his prerogative; and though he remitted them at various times, it was on the petition of the Commons, and in consequence of larger grants in a parliamentary way. The examples of severity at the close of that prince's reign, which he imputes to other causes, struck such a terror that there was no attempt to impose afterwards till the time of Mary. But what then? Calais was conquered from France, and a staple was established there by Edward III., by which he laid impositions out of the kingdom, and obliged the merchants to carry their exports thither. 'This he did by ordinance in virtue of this prerogative; and if this ordinance so made had been thought unlawful and against the liberty of the subject, it would never have been approved and continued by so many parliaments in the times of Rich. II., Henry IV., Henry V., and Edw. IV., neither could there have been such heavy penalties laid by these parliaments upon the transgressors of those ordinances.' Queen Mary used her prerogative after she lost Calais; and though the merchants in the beginning of the next reign complained of it, yet it was continued. The judges were assembled; and though their judgment is not to be

es were able to extort money from the people. We seen instances in the reign of Mary. Elizabeth, before her coronation, issued an order to the custom-house, prohibiting the sale of all crimson silks which should be exported till the court were first supplied. She expected, doubt, a good pennyworth from the merchants while lay under this restraint.' As the learned historian alluded to the embargo in the time of Queen Mary,

we may conclude that it would have been favourable to the Crown.

he argued unphilosophically (his own corruption.) Elizabeth imposed some new duties. In xxxiii. he has a comparison between the impositions set and taken gland by the prerogative and belles, &c., of other countries, whereby it will appear, that the ts of the Crown of England do ar so heavy a burthen by many s as the subjects of other na-

He impudently contends that ing of England has as much as any Emperor of Rome or many, or any other state or in the world; but he admits the English monarchs had not sed their authority. He gives ancholy picture of impositions, Continent, and says:—'Thus e that the King of England lay but his little finger upon bjects, when other princes and do lay heavy loins upon their . This he ascribes, not to a nce of power, but of gracious ies in the prince. 'Lastly,' e, 'our kings of England, in wisdom, well understood the and dispositions of their ; and, knowing them to be a generous, and noble nation, hem not fit to be beaten with oam's rod; esteemed them too to be whipt with scorpions; herefore, God be blessed, we not in England the gabeller ng at every town's end; we not a publican in every mar- we pay not a gabelle for every of reddish, or branch of rose-

mary, sold in Cheapside; we have no complaining in the streets, as is said in the 144th Psalm; and therefore I may well conclude with the conclusion of that psalm—"Happy are the people that are in such a case; blessed is the people that have the Lord for their God above in heaven, and King James for their king here upon earth."

In p. 155, he well observes that 'in France, the most richest and ancientest of the neighbour kingdoms, the impositions, not only upon merchandise crossing the seas, but also upon the lands, goods, and persons within the realm, are so many in number, and in name so divers, as it is a pain to name and recollect them all.'

Such is the treatise which Mr. Hume selected as affording the most indisputable evidence of those powers in the Throne which he chose to ascribe to it (see also in Carte's *Hist.* vol. iv. p. 191, a transcript from manuscript in Davies' handwriting). But it is quite clear that the acknowledged constitutional principles in his own time would have given ground for similar deductions, because the powers from which Davies drew his inferences have not been taken from the Crown. By the way, nothing demonstrates the stretches of prerogative attempted by the Stuarts so much as the shameless profligacy of the leading lawyers. Bacon also prostituted his pen in this question; but he assumed a different and more modest ground, claiming it from law.

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under the head of customs imposed by her, he ought not to have repeated it, as if it had been another engine to extort money; and with regard to the instance in the reign of Elizabeth, it is necessary to do little more than quote the words of the authority to which this elegant writer refers: 'That the coronation,' says Mr. Strype, the only authority referred to, 'might be done with the greater magnificence, the customers of London were appointed to stay all crimson-coloured silk as should arrive within their ports until the queen should first have her choice towards the furniture of her coronation; and to give warning to the lords of the council if any such should arrive there; *but, nevertheless, to keep the matter secret.*'* This argues a lamentable meanness in Elizabeth, but does not support the historian's statement. She does not pretend to stop the goods by her prerogative—for, in that case, secrecy would have been impracticable: she evidently trusted to the ingenuity of the customers to invent excuses for detaining the goods, and affords the clearest proof of the illegality and novelty of the measure by sending the injunction 'to keep the matter secret.' Upon the subject of embargoes in general, we shall only observe that the law does not appear to have undergone any material change. There had been no fewer than thirty Acts about opening and shutting the ports. The power entrusted to the sovereign on this head is conceived to be requisite, in order to prevent a greater evil; but it was always held as law, that no dispensation or license contrary to the embargo could be granted for money by the prince. Sir Edward Coke, amongst others, is explicit on this point; and Sir Matthew Hale, who has told us that proclamations with various penalties which neither could be nor were intended to be enforced, were occasionally issued, observes, that 'if it were admitted that in these particular cases of arms, ammunition, victuals, and money such proclamations might be made, and thereby the

* Strype's *Annals*, vol. i. p. 27.

offenders might be subject to fine and imprisonment, yet it could not be extended to other things, neither ought or might this inhibition be an engine to gain money by licenses ; for, if the proclamation had any strength, it was because of the inconvenience of the exportation of those things. If it were not a public inconveniency, it could not be inhibited barely by proclamation ; and if it were a public inconveniency, it might not be licensed for private profit. If it might, the strength of the proclamation would consequently cease.*

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‘ The sovereign even assumed a supreme and uncontrouled authority over all foreign trade ; and neither allowed any person to enter or depart the kingdom, nor any commodity to be imported or exported, without his consent.’ The slightest examination might have satisfied Mr. Hume that his statement was altogether erroneous and unfounded, and that the law in regard to embargoes, and to opening and shutting the ports, differed then very little from what it was in his own time.† As to the right of individuals to enter or quit the kingdom, the utmost liberty was allowed at common law, unless the prince laid a positive prohibition ; but by the 4th chapter of the ‘ Constitutions’ of Clarendon, ecclesiastics were restrained from going abroad, because, from their attachment to the Romish see, they promoted its usurpation over the liberties of England. And by the time of Edward I. peers were also restrained, because they were the regular counsellors of the Crown ; knights, because they were bound to defend the kingdom from invasion ; archers and artificers, because they carried the arts out of the kingdom. But by 5th Rich. II. c. 2, matters were so far reversed that great men and notable merchants only were permitted to pass beyond the seas at pleasure. By the 25th of Henry VIII., it was provided that ‘ no person resident

Power assumed by the sovereign over foreign trade, and over the persons of individuals in preventing them from travelling without a license.

* Hargrave's *Tracts*, part ii. c. 9, p. 96 (see the whole chapter).

† 3rd *Inst.* c. 84; Hale's *Treat.* in

Hargrave's *Tracts*; the *Great Case of Impositions* already referred to in Howel ; Blackst. vol. i. p. 206.

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within any of the king's dominions should depart out of any of those dominions, to any visitation, congregation, or assembly for religion.' This was revived for a limited period by the 1st Eliz. c. 1.* The powers granted to the Crown may be imprudent, or impolitic; but where the legislature thinks it necessary to make a provision against any supposed evil, it is, surely, not logical to rank this under the head of prerogative. The prince is bound to execute the laws, though these may not always be consonant to strict principles of policy or general liberty. When the supposed necessity for the act ceases, or more enlarged notions are entertained, an alteration is made upon the law. This accordingly happened on the point we are now discussing, the law of Richard II. prohibiting the people from going abroad having been repealed; but the prerogative was not abridged, nor yet is it, since the prince has always possessed the power of restraining, under severe penalties, any individual from leaving the kingdom, by the writ *Ne exeat regnum*. The principle of the law is, that certain individuals might, on great occasions, injure the state by carrying information abroad; and it is thought better to lodge in the king a power that may be abused to the oppression of an individual, than expose the nation to the hazard of ruin. This branch of the prerogative, however, has long been unexercised; and, even in Elizabeth's time, restraint was rarely used. 'No man could travel,' says Mr. Hume, 'without the consent of the prince. Sir William Evers underwent a severe prosecution because he had presumed to pay a private visit to the King of Scots.' The true answer to this account of the prerogative is the view which we have given of the law. But this case of Evers, when investigated, shows that the government of Elizabeth, in the exercise of powers committed to her by the legislature, was not characterised by rigidity. It happened about the close of that queen's

* 3rd Inst. c. 84; Hale's Treatise on Jurisdiction, and the Great Case of Impositions, already referred to; Blackst. vol. i. p. 266.

reign, when she had the mortification to discover that her courtiers turned their eyes towards the rising sun. Evers went to Scotland for the purpose of intrigue, and he was detected: yet, while he might legally have been punished for leaving the kingdom without a license, he suffered imprisonment for merely having solemnly denied that he had been at the Scottish court. Whether his confinement was long continued does not appear.*

‘There was,’ says Mr. Hume, ‘a species of ship money imposed at the time of the Spanish invasion. The several ports were required to equip a certain number of vessels at their own charge, and, such was the alacrity of the people for the public defence, that some of them, particularly London, sent double the number demanded of them.’ In other words, the seaports, animated, like the rest of the nation, with zeal for the public defence at such a crisis, volunteered ships and men.† It does not appear that any compulsive means were attempted, and it cannot be denied that, if ever a case could justify an illegal mode of calling out the resources of the country, it was the one in question, when an invasion, which threatened every thing valuable in existence, was daily apprehended. At such a crisis, such as do not show alacrity in the public defence may be considered concealed enemies. And at that period, as it was ships and men, not money, that were required, so all classes volunteered their services. Surely, therefore, it would be a poor return for that noble spirit which baffled the attempt of the enemy, and preserved for their posterity so many blessings, to cast obloquy upon

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The species of ship money said to have been imposed by Elizabeth at the time of the Spanish invasion.

* Hume has quoted Birch's *Mem.* vol. ii. p. 508, in support of his statement; but it would have been better to have gone to Birch's own authority, which is the following passage of a letter from the secretary to Sir R. Winwood, then in France, regarding the Scotch ambassadors: ‘Some small requests they made for Sir William Evers, who is in prison, for coming secretly to see the king

in Scotland, which he afterwards abjured when the contrary was plain, and so only imputed to him in that respect *pro delicto*’ (Winwood's *Mem.* vol. i. p. 524). See a very characteristic letter of James, in regard to the intrigues in which Evers was concerned. The English began to be much discontented with Elizabeth's government (Birch, *Ib. et seq.*).

† Maitland's *History of London*.

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conduct that ought to endear their memory to us, as if they had sanctioned an illegal tax; or to liken a measure which, though imperiously called for, was yet voluntary, to a proceeding by the prince that arose from a determination to overturn every constitutional principle of government, by raising money without the intervention of the legislature. In 1601, the city of London, on an apprehension of a fresh attempt by the Spaniards, again raised men for the public defence, and fitted out a certain number of galleys—conduct for which they received the royal thanks.* It may be imagined that, possibly, the city might not, on the last occasion, have been so forward had it not been for their secret conviction of the overwhelming influence of the Crown; but as they maintained at least the appearance of volunteering, while they, with the rest of the kingdom, knew that any compulsory demand of the kind was unconstitutional, it must be admitted that they reserved their right to resist anything of the kind, whenever they perceived that they could do it with effect. The grand constitutional limits to the prerogative, at least, still remained unaltered in the estimation of all men.

New-year's
gifts.

‘New-year’s gifts were expected at that time,’ says the historian, ‘from the nobility, and from the more considerable gentry.’ In support of this statement, he quotes from Strype an account of new-year’s gifts to Henry VIII. in the year 1532. But had that very document been examined, it must have satisfied him of his mistake. The value of the whole gifts amounted to 792*l.* 10*s.* 10*d.*, and the number of the granters was thirty-eight, of whom twenty-four were ecclesiastics. Had such gifts been expected from all the nobility, we should have found all their names in the list; yet it contains the names of fourteen laymen only, and of these just seven were peers.

* Maitland’s *History of London*, p. 171. They seem to have been adventuring with the queen in fitting out vessels, and to have acquired a

good share of the booty (Strype’s *Annals*, vol. iv. p. 128 *et seq.*, regarding the carrack taken in 1592.

The fact is, that new-year's gifts were then in fashion, and that those who depended upon the court, or desired its patronage, embraced that method of testifying respect for their master; while, if they did not always obtain similar presents in return—which, however, appears to have been the case—they expected something, in another way, infinitely more valuable. Accordingly, of the seven commoners whose names as donors appear in this list, one was master of the rolls, and another was 'Hasilwood of the receipt.'* But what sets this matter completely at rest, and evinces how readily the historian caught hold of every insulated circumstance which seemed to afford a basis for his theoretical view of the ancient English government, is an original document in the British Museum, being a long roll of vellum signed by Elizabeth in three different places, which contains an exact account not only of all new-year's gifts to the queen, but of those by her, in the eighteenth year of her reign. Those to whom gifts were made were ladies of quality, maids of honour and other ladies, statesmen, noblemen, bishops, and gentlemen, including those of the bedchamber. The presents were in plate, almost all gilt, and the weight of the whole was 5,109½ oz. On the other side of the roll is a list of gifts to the queen, and these are by the identical individuals to whom she had made them. The gifts to the sovereign were in money, and the whole amount was 1,032*l.* 16*s.* 8*d.*, which, I presume, would be about the value of the plate. In short, this mighty affair, from which, amongst other things, Mr. Hume infers that 'the inventions were endless which arbitrary power might employ for extorting money,' turns out to have been a mere reciprocity of politeness and kindness between the monarch and the principal subjects who had access at court; and the latter just appear to have given, on those occasions, the price of what they received, while those

* Strype's *Ec. Mem.* vol. i. p. 137.

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IIPower of
dispensing
with the
laws.

mutual favours were calculated to secure for them benefits of a far higher kind.*

'The legislative power of parliament,' says Mr. Hume, 'was a mere fallacy, while the sovereign was universally understood to possess a dispensing power, by which all the laws could be invalidated and rendered of no effect. The exercise of this power was also an indirect method practised for erecting monopolies. Where the statutes laid any branch of manufacture under restrictions, the sovereign, by exempting one person from the laws, gave him in effect the monopoly of that commodity. There was no grievance at that time more universally complained of than the frequent dispensing of the penal laws.' We shall first speak of dispensations from the penal laws, which, according to the historian, were so much complained of. One of the powers annexed to the Crown has always been that of pardoning criminals and remitting penalties, while the sovereign is not legally obliged to prosecute in any particular instance. Hence sprang the exercise of another power, which, though illegal, was analogous to the undoubted privileges of the monarch—that of granting dispensations to individuals from the penalties of certain statutes that were supposed to press particularly hard upon them (and, from the number about apparel, for

* Ayscough's MS. Brit. Mus. No. 4,827, entitled thus: *Anno Regni Regine Elizabeth. Decimo octavo. 'New yeres giuftes geven by the Queene's Maiestie at her Highness Honor of Hampton Court, to theise persones whose names hereafter ensue the first of January the yere aforesaid.'* On the other side is the list of presents to her. The roll also contains an account of plate, some of it in gold, and of considerable weight, given in presents on other occasions.

Mr. Hume has charged Elizabeth with breaking faith with Raleigh, in regard to the expedition undertaken by him and Frobisher in 1592,

and the prize of the carrack worth 200,000*l.*; for that her share amounted only to a tenth, and that, when the prize was so great, she would not be satisfied, and Raleigh earnestly requested her acceptance of 100,000*l.* in lieu of all demands. But there seems to be a mystery in the case. Great part of the wealth had been pilfered; and Raleigh appears to have been suspected of unfairness, and to have been imprisoned on that account (see all the papers about it in Strype, vol. iv. Nos. 81, 82, 83, 84, 85; Camden, p. 569). His whole conduct was censured on the occasion (see Life prefixed to his *Hist.* p. 5).

instance, 'some of them fighting with and cuffing one another,' as well as those about uniformity, &c. in religion, such must frequently have been the fact), that they might not be vexed by informers. But one departure from law seldom fails to introduce another. In bad times, those of Henry VII. during the ministry of Empson and Dudley, and of Mary particularly, power to grant dispensations and compound for forfeitures was procured from the Crown by certain persons who, by that authority, oppressed the people.* This last, however, was always held to be grossly illegal; and Sir Edward Coke lays it down, that 'all grants of the benefit of any penal law, or of power to dispense with the law, or to compound for the forfeiture, are contrary to the ancient fundamental laws of the realm.' He informs us also, that 'it was one of the articles wherefore the Spencers, in the reign of King Edward II., were sentenced, that they procured the king to make many dispensations.' The understanding of people in Elizabeth's time, and the general practice of government, may be estimated from the following passage in Smith's 'Commonwealth':—'The prince useth to dispense with lawes made, whereas equitie requireth a moderation to be had, and with paines of transgressing of lawes, where the paine of the lawe is applied only to the prince. But where the forfeite, as in popular actions it chaunceth many times, is part to the prince, the other part to the declarator, detector, or informer, there the prince doth dispense with his part only.† Where the criminal action is intended by inquisition (that manner is called with us at the prince's suite), the prince giueth absolution or pardon, yet, with a clause, *modo stet rectus in curia*, that is to say, that no man object against the offender. Whereby, notwithstanding that he hath the prince's

* 3rd Inst. p. 187 (see Coke's Reports, part vii. p. 63; case of Penal Statutes, 2 Jac. Hil.) From this case, it appears that Elizabeth had granted a power to compound—I

hope it was a solitary instance—and the judges condemned it.

† Smith's Commonwealth, b. ii. c. 4.

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pardon, if the person offended will take upon him the accusation (which in our language is called the appeale) in cases where it lieth, the prince's pardon doth not serue the offender.' With regard to dispensations which laid any particular branch of commerce or manufactures under a restriction, they could not be too much reprehended, and parliament itself had early exerted its powers to prevent so great a grievance. 'In the 50th of Edward III.,' says Coke, 'Richard Lions, a merchant of London, and the Lord Latimer, were severely sentenced in parliament for procuring licenses and dispensations to transport wools.* On the subject of monopolies in general, we shall only observe in passing that they were carried in Elizabeth's time to a monstrous height, and that they were clearly illegal; but that Mr. Hume has not been fortunate in an instance adduced by him to exemplify the effect of dispensations from a law that laid any particular manufacture under restriction. A statute, passed in 1576, prohibited goldsmiths from selling articles under the fineness of twenty-two carats. An individual, however, had, long anterior to the Act, manufactured certain articles of a lower standard; and, as the statute threatened him with ruin, the queen granted him a dispensation for the sale of the particular articles which he had prepared before the passing of the Act, and which are specially described in a schedule annexed to the patent.† This was illegal; but not such as could excite any considerable discontent.

Proclamations.

'But, in reality,' says Mr. Hume, 'the Crown possessed the full legislative power by means of proclamations, which might affect any matter even of the greatest importance, and which the Star-Chamber took care to see more rigorously executed than even the laws themselves. The motives for these proclamations were sometimes frivolous

* *3rd Inst.* c. 86; also *Rot. Parl.* 50 Ed. III. Nos. 17 and 28, vol. ii. pp. 323, 326. These both directly strike against monopolies and dispensations of all kinds, and the first

does also against impositions on merchandise without an Act of Parliament.

* Rymer's *Fœd.* vol. xv. p. 756.

and even ridiculous. Queen Elizabeth had taken offence at the smell of woad, and she issued an Act prohibiting any from cultivating that useful plant. She was also pleased to take offence at the long swords and high ruffs then in fashion. She sent about her officers to break every man's sword, and clip every man's ruff which was beyond a certain dimension. This practice resembles the method employed by the great Czar Peter to make his subjects change their garb.' This is a very extraordinary statement. The legislature had conferred a certain power upon the Throne in the time of Henry VIII. to issue proclamations, which, to a limited extent, were to have the effect of laws; but the power was withdrawn in the next reign, by the authority that conferred it, and no one ever ascribed to the prerogative, of itself, any right to alter the laws of the land. With regard to the instances referred to by Mr. Hume, they do not warrant his statement. Elizabeth, deeming the smell of woad a nuisance, because she could not herself endure it, interdicted the cultivation of the plant; but parliament complained of the proclamation, and it was instantly recalled.* As for the others, they may be supposed too ridiculous to require any remarks, since people might not choose to impugn the illegal exercise of the royal power on such trivial occasions, and yet upon examination the matter will appear in a very different light. It was the practice of that age for people not only to go about with remarkably long swords, and to wear them in a threatening manner, but to carry a species of pocket-pistols called daggs, and to wear besides privy coats or doublets of defence. Thus arrayed, they disturbed the public peace, quarrelling with, and making frays upon, the unarmed. The quiet part of the community complained, and the queen issued proclamations prohibiting the use of privy coats, &c., as well as daggs and similar weapons, which, she well observes, 'in time of peace

* D'Ewes, pp. 652, 653; Townsend's *Journals*, p. 250.

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were only meet for thieves, robbers, and murderers.' She enjoined, at the same time, that the swords should be reduced to a more moderate length, not exceeding a yard and half a quarter—a size supposed to be less formidable to the peaceful—and that they should not be worn in the 'hectoring' way then in fashion. It must immediately occur to the reader that, had no statute devolved upon the executive the right of correcting such an evil, it belonged to the queen as conservator of the public peace; but parliament had not been so inattentive to the general safety, for it had provided laws against going armed, by which penalties, such as forfeiture of the arms, fine, and imprisonment were imposed upon the guilty. Elizabeth, therefore, proceeded upon powers vested in the Throne by the legislature, and which subsist at this day. The proclamations were founded on statutes which were specially quoted,* and were perfectly legal as well as expedient. Sir Edward Coke observes, that such writs might be devised for the better execution of the statutes; and then says emphatically, in speaking of this subject, 'Note, proclamations are of great force when they are grounded upon the laws of the realm.'† Nor was it she who sent about officers to measure the swords, but the mayor of London, who, in carrying the proclamations into effect, sent select citizens to the several gates to ascertain whether they were obeyed.‡ Far from censuring this proceeding, we ought to mark it with approbation.—The case of the ruffs is more questionable in law, and luckily also in point of fact. It was the mistake of those times for the legislature to interfere with matters that ought to be left to the regulation of individuals, and many statutes had, from time to time, been devised against excess of apparel, which, it was imagined, tended to impoverish the nation, and draw after it a train of evils.§ During Elizabeth's

* Strype's *Annals*, vol. ii. p. 602
et seq.

† 3rd Inst. p. 162. See ch. 73,
about going or riding armed.

‡ Stow's *Survey*, by Strype; *Temporal Government*, vol. ii. p. 441.

§ 3rd Inst. ch. 95.

parliament did not allow this subject to escape its notice, but passed three laws against that supposed mis-while several bills were rejected.* In conformity with the laws, the queen issued proclamations, in which she threatened to exact the penalties; but as none of the laws entitled her to meddle with the ruffs, so there was to be only one authority for the story about them, that a questionable one—Howes, the continuator of

According to that writer, the ruffs began to be exceedingly high, and foreigners ridiculed them as barbarous. To prevent this imputation, as well as to do no offence to the eye, the queen sent about grave citizens a measure that article of dress, and curb the licence of it.† If Howes be correct, the acquiescence

Howes, pp. 134, 188, 594. The laws had become very vexatious and therefore by 1 James I. they were all abrogated (3rd ed. 185).

Howes mentions this in his *Life of James I.* in his continuation of Stow's *Annals*, p. 800. He says that the old English was the sword with the ruff; 'for shortly after began the ruffs and long rapiers, and he says that this continued to the greatest gallant that had the deepest ruffe and longest ruffe. The offence to the eye of the ruffe and the hurt unto the life subject that came by the ruffe caused her majesty to make proclamation against them both, and selected grave citizens at that time, to cut the ruffles, and he rapier's point of all passed that exceeded a yeard in length in their rapiers, and a nayle in depth of their ruffles.' that the English called the ruffe the French fashion; but that the French disclaimed it, calling it a fish monster. Now, in his *Survey*, which, considering the accuracy both of the original author and the editor, we must conceive to be correct, it is expressly said that the mayor, out of his sense of official duty, sent the citizens to different quarters of the city to inspect the ruffs. Many accidents and quarrels had happened. There is, however, no mention of ruffs either in the account of the proclamations about apparel given in the *Annals*, or in the *Survey*, while it is particularly mentioned in the last that the common council of London petitioned the queen to relax the rigour of the statutes, as many informers were abroad vexing the people by prosecuting for the penalties, &c. (*Ib.*) Now, it is inconceivable that such an omission should have occurred; and, with regard to another authority quoted by Mr. Humie—Townshend's *Journals*—it has not the most distant allusion to such a subject. Sir R. Cecil, in announcing the recalment of monopolies, thus addresses the house humorously, but in bad taste: 'That you may eat your meat more savoury than you have done, every man shall have salt as good cheap as he can buy it or make it freely, without danger of that patent which shall be presently revoked. The same

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of the people may easily be accounted for, without even supposing that they connived at such a usurpation upon their privileges. When the royal proclamation had been issued, the common council applied to the Throne for a mitigation of the laws; and, as this was granted, it is possible that Elizabeth might, at their request, consent to relax the rigour of the statutes, on condition of their restraining the offensive size of ruffs; and that those who were obnoxious to punishment by statute-law for excess of apparel (such only would be likely to wear uncommon ruffs), would be satisfied to suffer in that respect, when they found themselves relieved from the legal penalties in another. But, indeed, this is a point scarcely worth investigation, as it would not be any great proof of slavishness in the people that they were above contesting a trifle of this kind with a beloved monarch, whom they, with the rest of Europe, considered the bulwark of the Protestant cause; and unless it be supposed that the historian could have produced something more important to justify his general statement, few will be inclined to adopt his view of the government in that age.

Stopping
the course
of justice
by particu-
lar war-
rants.

Stopping the course of justice by particular warrants is reckoned by Mr. Hume amongst the abuses of those times, and one of the strongest proofs of arbitrary power: he says also, that parliament, in the 13th of the queen, praised her for not imitating this practice, which was usual amongst her predecessors; but he has scarcely done justice to his authority. In those days, the speaker of the Commons, when presented to the sovereign for his or her approbation, used to make a fulsome oration upon

benefit shall they have which have cold stomachs, both for *aqua vita*, *aqua composita*, and the like,' &c. After proceeding in this way, he says, 'Those that desire to go sprucely in their ruffs, may with less charge than formerly accustomed obtain their wish; for starch, which hath been so much prosecuted, shall

now be repealed' (Townshend's *Journ.* p. 250; D'Ewes, pp. 652, 653). Surely this does not support Mr. Hume's statement. Nay, it does the reverse; for if Elizabeth had really taken such offence at the size of the ruffs, the secretary would have hinted that he hoped gentlemen would not wear them too high.

the excellency of the present ruler: high compliments passed on both sides, and abuses of former times were brought forward to form a contrast with the felicity of the present. In the course of his harangue, the speaker, on the occasion alluded to in the 13th of Elizabeth, 'said something in commendation of her majesty, who had given free course to her laws, not sending or requiring the stay of justice as heretofore *sometimes* hath been by her progenitors used. Neither hath she pardoned any, without the advice of such before whom the offenders have been arraigned, and the cause heard.' * The historian says that 'the queen, in refraining from the practice, was very laudable, But she was by no means constant in this reserve. There remain in the public records some warrants of hers for exempting particular persons from all lawsuits and prosecutions; and these warrants, she says, she grants from her royal prerogative, which she will not allow to be disputed.'

This abominable practice early attracted the attention of the legislature, and is expressly provided against, not only by magna charta, but by other statutes. Nor were the laws on this head considered a dead letter, as courts of justice had repeatedly adjudged the warrants to be void.† Mr. Hume has referred merely to the warrants themselves, which neither show the circumstances out of which they emerged, nor the consequences with which they were attended; and he holds that because the queen in common form declares that she will not allow her command to be disputed, these warrants could not be impugned; but had he consulted Coke's 'Institutes' upon this point, he would have discovered that, not only in early reigns, but in those of Henry VII. and Henry VIII. and even of Elizabeth herself, these warrants had been resolved by the judges to be against law, and the

* D'Ewes, p. 141 (see those orations generally as to the strain of them, as well as addresses to the speaker).

† 2nd Inst. p. 56 (see also stat. 5 Ed. II. c. 32; 2 Ed. III. c. 8; 14 Ed. III. st. i. c. 14; 11 Rich. II. c. 10).

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II.Mono-
polies.

sheriffs had been amerced for not executing the writs. Nay, it is very singular that one of the three warrants referred to by Mr. Hume is also specially referred to by Sir Edward Coke, as having been adjudged void.*

The great grievance of Elizabeth's reign was monopolies. When an individual, by applying talent, time, and industry to any particular object, has made a discovery, there seems to be no way so well calculated to remunerate him, without injury to the community, as to grant him the exclusive right to the benefit of the invention for a certain term of years. This principle was early understood; but Elizabeth, availing herself of it, granted exclusive patents for ordinary manufactures, either as gifts to her courtiers, or as a mean of procuring money for the Crown; and the whole nation sensibly felt the effects of such a system, which was not only against the fundamental laws of the realm, but had been often adjudged to be so, even in parliament, as well as in the ordinary courts of justice.† In the course of Elizabeth's time, the evil swelled to that magnitude that the people at large bitterly cried out against it; and though parliament adopted language on the occasion little consonant to the public spirit of that assembly in the former parts of the same reign, the ministers of the Crown, with the queen herself, perceived it to be full time to yield to the public voice. Sir R. Cecil, when he announced to the Commons her majesty's purpose to recal the patents, complained that 'parliament matters were ordinarily talked of in the streets.' 'I have heard myself,' says he, 'being in my coach, these words spoken aloud—"God prosper those that further the overthrow of monopolies. God send the prerogative touch not our liberty." The time was never

* Mr. Hume has referred to three different places of the 15th vol. of Rymer's *Fœd.* for such warrants by Elizabeth, and the second is p. 708. Now, the warrant is in favour of Hitchcocke, and this is cited by Coke as having been condemned (2 *Inst.* p. 56).

† 3rd *Inst.* ch. 85. A new statute against them was passed in the next reign, 21 Jas. I. c. 3, when the evil had got very high. The statute bears to be a recognition of ancient laws.

more apt to make ill interpretation of good meanings. I think these persons would be glad that all sovereignty were converted into popularity.* Mr. Hume has justly remarked that, had the system of monopolies been continued, England would have contained at present as little industry as Morocco or the coast of Barbary; but he ought to have seen, at the same time, that since such a spirit was abroad, it would have required a band of Janizaries to have supported the Throne in such an unconstitutional proceeding. Elizabeth herself politically pretended to have been misled, and expressed the utmost indignation against the patentees, vowing vengeance upon them for their crimes, and solemnly protesting, with an appeal to heaven, that she never had granted one patent which she did not believe to be conducive to the public good.† Some of the patents were then remitted to the courts of law, by which they were condemned and made void as illegal.‡

Wardship, as one of the feudal incidents, it is unnecessary to describe, because every reader of intelligence is acquainted with it. It has been generally regarded as a sad grievance of former times; but in my opinion the point may admit of a doubt. They who suffered under it possessed advantages of the highest kind over the rest of the community; and this was just one of the conditions upon which they held so eminent a station, while it possibly was a mean of preventing the aristocracy from acquiring the most pernicious influence in society, by accumulations during the infancy of heirs. As society improved, wardship was properly abolished, because the other ranks had acquired such a standing in the community that they could form a counterpoise to the aristocracy. In short, it was just a species of tax upon property; and we may observe, that the wards of the Crown had better treatment than those of subjects. The right of giving the ward in

* D'Ewes, p. 653; but see p. 652.

† 3rd Inst. c. 85.

‡ See her speech in D'Ewes, p. 659.

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Restraint
upon the
marriage
of the
nobility.

marriage was one of the conditions of the holding; but the resistance of the ward was only attended with a definite pecuniary forfeiture.

‘None of the nobility,’ says Mr. Hume, ‘could marry without permission from the sovereign. The queen detained the Earl of Southampton long in prison, because he privately married the Earl of Essex’s cousin.’ With the exception of wardship, which applied to other immediate vassals of the Crown as well as the nobility, I know of no law that permitted the sovereign to interfere in those matters. But, with the Tudor family, the nobility, who began to decline in influence in the community, became attached by many ties to the court, and it was usual with them to consult the monarch in the grand affair of their marriage. This sprang from a feeling of interest, a desire of patronage, not from any notion of right in the Crown to interpose in such affairs, and the non-observance of this practice appears to have provoked the royal displeasure, which, I presume, showed itself in banishing or debarring the parties from court. Camden informs us that Elizabeth resented the conduct of Southampton, in privately marrying without consulting her, and took deep offence at Essex for appointing him master of the horse contrary to her orders; but the authority for the statement about the imprisonment is the following passage in a letter by Essex:—‘Was it treason in my Lord of Southampton to marry my poor kinswoman, that neither long imprisonment, *nor any punishment besides, that hath been usual in like cases, can satisfy or appease?*’* What that punishment, besides imprisonment, was, except the loss of royal favour and banishment from court, I cannot comprehend. But we may observe, that it does not appear that Southampton was ever prosecuted in any court of justice, even the Star-Chamber; so that his case affords no proof of a right in the Crown to meddle with

* Birch’s *Memoirs*, vol. ii. p. 472.

such matters.* His imprisonment, however, admits of an easy solution. CHAP.
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The openings for talent and enterprise in that age were so extremely limited, that young men of the first families entered into the service even of subjects, while they who had the prospect of the royal countenance eagerly crowded to court. The treatment which servants were then exposed to, however, is revolting to our ideas. The sons of distinguished families could submit to personal chastisement; nor was this a matter which could be remedied by law, because submission was voluntary. Those servants might easily have cast off their bondage, but they must have dismissed with it all hope of promotion; while what was common, and deemed a necessary ordeal through which enterprise passed to an eminent sphere in the state, reflected no disgrace upon the individual. Courtiers were also under a rigid discipline, and confinement in the Tower was a species of punishment to which they were exposed. Sir Walter Raleigh was imprisoned three months for debauching a maid of honour, the daughter of Sir N. Throckmorton, whom he afterwards married.† I presume that Southampton suffered as a courtier, and that he quietly submitted from the hope of regaining her majesty's favour, and with it, honours, place, and other rewards, to which he eagerly aspired.

* The case of Lady K. Grey and the Earl of Hertford appears to support the text. Elizabeth was very jealous of competitors for the crown; and when the Earl of Hertford privately married Lady K. Grey, of the blood-royal, she adopted very rigorous proceedings, which were commonly condemned, and yet she did not allege the clandestine marriage as the cause. Hertford was allowed a limited time to prove his marriage; but he failed to bring evidence within the period, and having passed through some doors of the prison to

visit the lady, he was sentenced by the Court of Star-Chamber for debauching a virgin of the blood-royal in the queen's palace, for having broken prison, and having abused her a second time. His defence was *that he was married* (Camden, p. 389).

† See his Life (Birch's *Mem.* vol. i. p. 79). The stat. 33 Hen. VIII. c. 12, against striking in the king's palace, excepts out of it noblemen and others who correct their servants with their fists, or any small staff or stick (sec. 6).

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II.
Purvey-
ance.

Purveyance was reckoned one of the grievances of that age; and it will be proper to give some account of it. Originally, the king's household was provided with necessities from the royal demesnes; and the deficiency was supplied by a constant market kept at the court-gate. As this was discontinued, purveyance began, At first, however, nothing could be lawfully taken without the owner's consent, the purveyors being merely caterers employed by the court. But, acting under the royal authority, they at times abused their office, by not sufficiently consulting the will of the sellers. The legislature was not inattentive to the evil, while it sufficiently regarded the comforts of the sovereign, who, in his progress through the kingdom, in ages when, from bad roads, &c., there were so many impediments in the way of quickly transporting provisions, must have often had the greatest difficulty in procuring the necessities of life, and there had been no fewer than forty-eight statutes passed on the subject. By the early statutes, the sale to the purveyors was voluntary; but, by later ones, those officers, provided they had a commission under the great seal, were entitled to take certain articles for the household, at prices which should be fixed by the constables, or other discreet men in the neighbourhood, who were first duly sworn to do justice to both parties. In spite of all the forty-eight statutes, purveyance was abused by the officers, whom Elizabeth herself, in indignation, called harpies; and she expressed an intention of substituting for the practice some other arrangement.*

Persecut-
ing sta-
tutes.

The historian remarks that 'it is no wonder the queen, in her administration, should pay so little regard to liberty, while parliament itself, in enacting laws, was en-

* *2nd Inst.* p. 542 *et seq.*; Camden, p. 388. Mr. Hume says that Elizabeth victualled her navy by purveyance during the first years of her reign; but Camden, his authority, only tells us that in 1561 'she revoked certain warrants which had been

issued out for victualling the fleet, giving money to the commissioners to buy it without burthening her people' (*Ib.*). The warrants were doubtless illegal, and it is well that they were not acted upon.

tirely negligent of it.' He then condemns the persecuting statutes which were passed against Papists and Puritans, as extremely contrary to the genius of freedom; and observes, that 'their conferring an unlimited supremacy on the queen, or, what is worse, acknowledging her inherent right to it, was another proof of their voluntary servitude.' In the preceding chapter we have had occasion to speak of the supremacy, and it will be perceived from it that Mr. Hume has not taken a correct view of the matter. It is true that Elizabeth affected to have derived from it a discretionary power of regulating religious matters; but she confined her government within the pale of the laws. Sir Edward Coke proves that the supremacy was always vested in the Crown of England; but his grand object was to vindicate the independence of that country on any foreign power. After quoting some old statutes, &c., he says that it was settled 'by three other Acts of Parliament'—viz., by the statute 25th Henry VIII. c. 21, 'Wherein by authority of parliament it is enacted and declared (directing their declaration to the king) that this your grace's realm, recognising no superior under God but only your grace, hath been, and is, free from subjection to any man's laws, but only to such as have been devised, made, and ordained within this realm for the wealth of the same, or to such other as, by sufferance of your grace and your progenitors, *the people of this your realm have taken at their free liberty by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same; not as to the observance of the laws of any foreign prince, potentate, or prelate, but as to the customed and ancient laws of this realm, originally established as laws of the same; by said sufferance, consents, and customs, and none otherwise.* And by the statutes 25th Henry VIII. c. 21, 1 Elizabeth, c. 1, and 1 Jac. c. 1, the Crown of this kingdom is affirmed to be an imperial crown.'*

* *4th Inst.* p. 342 (see also 5th part of *Reports*, p. 1 *et seq.*).

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Having cleared up this point, it may be observed, that Mr. Hume, in speaking of the persecuting statutes against Papists and Puritans, seems to have forgotten the question which he was endeavouring to settle—the power of the Crown in regard to the parliament; for his account of what the parliament did, unless he had shown—which he does not pretend to do—that, in this instance, they were obliged implicitly to obey the dictates of the sovereign, merely proves that the legislature, in imposing its principles by cruelty on the people, was not actuated by wisdom or policy. The same laws might—nay, most probably would—have been passed under the purest republic; and the Presbyterian party, had they prevailed, would have devised still more severe statutes against every sect that differed from them, while they reduced the power of the Crown to a nonentity. But because they abused their power, could it thence be inferred that they did not possess it?

Mr. Hume properly pronounces the law of the 23rd of her reign, ‘making seditious words capital, as also a very tyrannical statute;’ and it was no less impolitic, for, independently of all other objections, it may be remarked that severity ever defeats its object. But the question is, whether the statute sprang from such an overwhelming influence in the Crown over both houses of parliament as really deprived them of the legislative power, or from erroneous views of policy in them, or even from personal attachment to the sovereign. That statute made seditious rumours and words, *verbally uttered*, punishable, on the first conviction, with the loss of ears, six months’ imprisonment, and a fine of £200; and on the second conviction it was made felony without benefit of clergy. Writing and publishing seditious words, &c., were likewise felony without benefit of clergy. But, besides that the offence was to be tried within a year of its being committed, and proved by two witnesses confronted with the prisoner, the Act was to expire with the life of the queen. It may be

observed, that the very fact of Elizabeth's being obliged to apply to parliament for protection against personal wrongs, together with the cautious limitations of the statute, disproves Mr. Hume's idea of the unlimited extent of her prerogative.

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He has most justly condemned as tyrannical the use which was made of this statute in the cases of Udal and Penry. The whole proceedings against the first were irregular; but, as he had attacked the bishops very bitterly, denied the Church of England to be a church, and held that she was destitute of a lawful ministry, sacraments, &c., the clergy eagerly drove on the prosecution. Udal, however, was not executed, every means being in vain taken to prevail upon him to recant, and he died in prison.* Udal had refrained from any personal attack upon the sovereign, and the charge against him was constructive—that he had abused the ecclesiastical government, and consequently her majesty as its head. But the case of Penry was very different. Not content with the most scurrilous abuse of the bishops, whom he denominated a troop of bloody atheistical soul-murderers and sacrilegious church robbers, and as such desired to strip them of all their livings, fully intending to reserve their revenues for his own party—not satisfied with telling the people that they ought not to wait for authority to establish a proper ecclesiastical government, but to proceed in spite of prohibitions—he published that her majesty envied her subjects a saving knowledge of the true God; that she was yet unbaptised, while her people remained in infidelity, and stood generally condemned to hell; that an honest man could not possibly live under her government in any vocation whatever; and that she might as well make a new religion as new laws for religion.† That this

Cases of
Udal and
Penry.

* See Udal's case, by himself, in *Whitgift*, b. iv. c. 3; Birch's *Mem.* vol. i. p. 62).
Howel's *State Trials* (Strype's *Annals*, vol. iv. p. 21 *et seq.*; *Life of* *Ann.* vol. iv. No. 97; *Life of Whit.* b. iv. c. 3.

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language fell under the statute cannot be questioned ; but when a warrant was issued for his apprehension, he fled to Scotland, where he remained for three years. Fired with additional zeal in that country, he at last returned to England with a petition to her majesty, which he intended to have delivered in person. 'In it he declares that 'he had cause to complain, nay, the Lord and His church had cause to complain, of her government ; that her subjects were sold to be bond-slaves, not only unto their affections, to do what they would, so that they kept themselves within the compass of established laws, but also to be servants to the Man of Sin (the Pope) and his ordinances ; that she ought to rank herself amongst those who opposed the Gospel ; that the practice of her government showed, if she could have ruled without the Gospel, it never would have been established, and that it flourished more under her sister's reign than hers.' While he thus rails, he at the same time shows in plain terms that he desired her concurrence to root out every sect but his own.* This also was assuredly seditious within the statute, and was calculated to disturb the state ; but then it had not been published, and of course was as yet no libel. For his former writings he could not be arraigned, as the time limited by the statute was expired, and therefore he was unjustly charged with this, which had been in his custody as yet unpublished. It is said that the queen regretted his death ;† but the fury of the prelates exceeded her own.

'It was also,' says Mr. Hume, 'imputed to Penry by the lord keeper Puckering, that, in some of his papers, "he had not only acknowledged her majesty's power to *establish* laws, ecclesiastical and civil, but had avoided the *usual* terms of *making*, *enacting*, *decreeing*, and *ordaining* laws, which imply," says he, "a most absolute authority."' Hence the author infers that the queen's power was acknowledged to be absolute ; but in this, as in other

* *Life of Whit.* b. iv. cc. 3, 11 ; Neal, vol. i. p. 559 *et seq.*

† Neal, vol. i. p. 568.

instances, he only affords a proof of the danger of many conclusions regarding the laws and opinions of any age or country, and particular expressions from isolated passages. In strict constitutional language, the sovereign is the fountain of all law, and, as it must be known to everyone, all statutes bear, *in gremio*, to have been made by him, with the advice and consent of the lords spiritual and temporal and the commons in parliament assembled. When, therefore, in the next reign, the king pedantically claimed absolute power, he was answered that his notion was correct, but that this absolute power could only be exercised by means of his great council the parliament.* In Elizabeth's time, no one ever pretended that laws could be made by the sovereign without the intervention of the

* See *Har. MS.* British Mus. No. 737, and No. 1 of the vol. A remonstrance delivered to King James in writing, after the inhibition to the Lower House, not to proceed to examine his right to impose duties upon goods and merchandise, with Yelverton's speech against the right arrogated by the king to impose without an act of the legislature. He admits that there is a supreme power in the king; but argues that his power out of parliament is controlled by his power in it. 'Then,' says he, 'there is no farther question to be made, but to examine where the sovereign power is in this kingdom; for there is the right of imposition. The sovereign power is agreed to be in the king. But in the king is a twofold power: one in parliament, as he is assisted with the consent of the whole state; the other out of parliament, as he is sole and singular, guided merely by his own will; and if of these two powers in the king, one is greater than the other, and can direct and control the other,—that is *suprema potestas*, the sovereign power; and the other is *subordinata*' (p. 5). He clearly proves, by a vast number of authorities, that the supreme power is in parliament, where only laws, &c., could be made, as well as taxes im-

posed; then alludes to the conduct of Wolsey in regard to the benevolence attempted by him, and warns others to reflect on his fate; refers to the Act 25 Ed. III. against loans (a clear proof of Mr. Hume's mistake as to the Act of 2 Rich. II.), and to the law of Rich. III. against benevolences; quotes Bracton's words, *Rex est ubi dominatur lex non voluntas*, and alludes to the melancholy condition of France, declaring that there would be as few parliaments in England as there had been in that country, were the right of imposing once acknowledged to be in the Crown. The statutes and authorities in favour of the liberty of the subject are gone over at great length. Fortescue is quoted; Commynes referred to (see the same speech in Howell's *State Trials*, vol. ii. p. 477; see also Hakewell's on the same subject, p. 407 *et seq.*; see also the case of proclamations, *Id.* p. 723 *et seq.*, taken from 12 Coke's *Reports*, p. 74; Mich. 8 James I. 1610). Had Mr. Hume seen it, he would have avoided some fundamental mistakes which unfortunately run through his history.

See also Raleigh's *Dialogue between a Councillor of State and a Justice of Peace*.

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legislature ; and the very usual terms of making, enacting, &c., ought to have set Mr. Hume right, while it is somewhat inexplicable how the whole passage referred to should not have had that effect. That portion of the puritanical party to which Penry was attached denied the power of the legislature to make laws about religion, while they confidently asserted that they derived from heaven a legislative authority, which the civil government was bound to ratify. When it was argued against them that their ecclesiastical government was incompatible with the civil, they plainly avowed that, if such were the fact, the civil government, as the result of human policy, ought to be made conformable to the ecclesiastical, which was divine—not the ecclesiastical to the civil. Their ideas about deposing princes, too, were equally bold. In short, as we have shown in the preceding chapter, from the notes of this very lord-keeper Puckering, their notions would have necessarily led to the subversion of the state, while they who exclaimed against the tyranny of forcing consciences declared it, at the same instant, to be the duty of the magistrate to root out every sect which dared to impugn their decrees. It was under this impression that Puckering drew up his observations in Penry's case ; and his real words, which Mr. Hume has neither quoted correctly nor fully, leave no doubt on the point. He endeavours to prove, from many grounds, that Penry is not, as he pretends, a loyal subject, but a seditious disturber of her majesty's peaceable government ; and, in the sixth place, he says this appears 'by so many of his protestations, wherein he acknowledgeth her majesty's power only to establish laws ecclesiastical and civil, shunning the usual terms of making, enacting, decreeing, ordaining laws, which import a most absolute authority ; *as though her majesty had no such power, but only a prerogative to establish and ratify such laws as are made to her hand by the omnipotent presbytery, as he and others of his crew*

*have both taught and written.** The language of Puckering is certainly not commendable, for he might have

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* Strype's *Annals*, vol. iv. Nos. 116 and 117. In giving an account of the Presbyterian party, I have abstained from quoting the works of their greatest enemies, as Heylin, &c., and I am aware that many of the leaders began to qualify their language and affect great loyalty when they found their weakness and were exposed to danger. I am also aware that, as Puckering in his judicial capacity opposed them, it may be argued that his testimony ought not to be relied on; and therefore, to show his correctness, I give the following passage from the works of the leading man, Cartwright, which will speak for itself:—'It is true,' says he, in his reply to Whitgift, 'that we ought to be obedient unto the ciuile magistrate which gouerneth the church of God, in that office whych is committed unto him, and according to that calling. But it must be remembered that ciuile magistrates must gouerne it according to the rules of God prescribed in hys word, and that they, as they are nourishes, so they be seruants unto the church, so they must remember to subiect themselves unto the church, to submit their scepters, to throwe downe their crownes before the church, yea, as the prophet speaketh, to licke the duste of the feete of the church. Wherein I meane not that the church dothe eyther wring the scepters oute of princes' handes, or taketh their crownes from their heades, or that it requirith princes to licke the duste of her feete, as the pope under thys pretence hath done' (from this qualification we should conclude that the first part had some mystical meaning, and that the writer had no idea of the Romish arrogance, but what follows shows that he also would have been a pope in a different guise); 'but I meane as the prophet meaneth, that whatsoever magnificence, or excellence, or pompe, is eyther in them, or in their estates and common-

wealthes, whych dothe not agree wyth the simplicitie, and, in the judgment of the world, pore and contemptible estate of the church, that they will be content to lay downe.

'And here cometh to my minde that wherewyth the world is nowe deceiued, and wherewyth M. Doctor goeth about bothe to deceiue him self and others to, in that he thinketh that the church must be framed according to the commonwealth, and the church gouernment according to the ciuile gouernment, which is as much as to say as if a man shuld fashion hys house according to hys hangings, when as in deede it is cleane contrary, that, as the hangings are made fit for the house, so the commonwealth must be made to agree wyth the church, and the gouernment thereof wyth her gouernment: for, as the house is before the hangings, and therefore the hangings which come after must be framed to the house whych was before, so the church being before there was anye commonwealth, and the commonwealth comming after, must be fashioned and made sutable unto the church, otherwise God is made to geue place to man, heauen to earth, and religion is made as it were a rule of Lesbia to be applied unto anye estate of commonwealth whatsoever.

'Seeing that good men, that is to say the church, are as it were the foundation of the worlde, it is meet that the commonwealth, which is builded upon that foundation, shoulde be framed according to the church, and therefore those voyces oughte not to be heard, this order will not agree wyth our commonwealth, that law of God is not for oure state, thys forme of gouernment will not matche wyth the policie of thys realme' (p. 144).

The severity of the sect may be estimated from what is said in pp. 68-70, 90-100, &c., in regard to punishments (*2nd Reply*). In p. 93, he

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Burghley's
proposal to
erect a new
court for
the correc-
tion of all
abuses, &c.

alluded to the parliament ; but, while it was soothing to the royal ear, for which this courtier prepared it, it was not unconstitutional, and could not be misunderstood. The queen acted with, not against, the legislature.

What we have just said, partly explains the language of Burghley, when, in a speech to the council, he proposed that the queen 'should,' to use Mr. Hume's words, 'erect a court for the correction of all abuses, and should confer on the commissioners a general inquisitorial power over the whole kingdom ;' 'to proceed therein indeed,' says Burghley, 'as well by direction and ordinary course of your laws, as also by virtue of your majesty's supreme regiment and absolute power from whence law proceeded.' 'This proposal,' says Mr. Hume, 'needs not, I think, any comment. A form of government must be very arbitrary indeed, where a wise and good minister could make such a proposal to the sovereign.' The minister who proposes to overturn the laws of his country by an arbitrary act of the chief magistrate, can neither be accounted good nor wise ; and, had such an attempt ever been made, Burghley might himself have fallen a sacrifice to his guilty rashness, or would, doubtless, on the first change in administration, have suffered the fate of Empson and Dudley, to whose actions he alluded. But, though the whole speech be in the grossest style of adulation, I do not conceive that it will be difficult to rescue his memory from this imputation, and to prove that he never intended that the sovereign should act without the interposition of the legislature. Our inquiry, too, will throw light upon that statesman's plan, which would otherwise be scarcely intelligible. The scheme was first developed by the lord-keeper Bacon in his address, in her majesty's name, to both houses,

properly approves of the ancient maxim, that as little as possible should be left to the discretion of the judges.

Cartwright was apprehended by a warrant from the commissioners ;

and it was remarked sarcastically by men of note, that surely the object was to do him honour ! (Birch's *Memoirs*, vol. i. p. 62). This requires no comment.

at the dissolution of parliament, in the 13th of her reign. After adverting to the state of the country, and showing that inquests were overborne, the guilty acquitted, the innocent condemned, and the laws, which were good of themselves, made 'instruments of all injuries and mischiefs,' by the very individuals who were selected by the prince to enforce justice throughout the kingdom, he intimates that there should, with authority, be a triennial visitation of all temporal officers and ministers by commissioners nominated by the queen, upon the principle of the visitation of the church, who should be authorised 'to try out and examine by all good ways and means, the offences of all such as have not seen to the due execution of the laws, and according to the offences so found and certified, to be sharply punished without omission or redemption.*' The scheme, which the lord-keeper had

* D'Ewes, p. 153. We have already brought forward much evidence regarding the state of justice in those times; but the reader may, perhaps, still excuse the following, taken from the anonymous answer to Knox's *Blast*, published in 1559, entitled, *An Harbottle for Faithful Subjects*, and written by John Aylmer, afterwards Bishop of London. He shows that the English laws excelled others, and particularly the civil, in respect of the trial by jury in the place of racking to extort evidence, a practice which he strongly condemns (another proof of Mr. Hume's mistake on the subject); yet of the trial by jury he says:—'But in deede at these dayes it is growen to great corruption, and that thorowe one speciall means, or two, which be these. If there be any noble man dwellynge in the countrey, either a duke, a marques, an earle, or baron, he shall lyghtlye have in his retynewe all the cobbes in the countrey, which be the questmongers, and if any matter be touching him, his man, or his frende, whether it bee a cryme capitall, or

nisi prius, sent downe for landes; the case shall wey as he wil. For his deteynors must nedes haue an eye to my lorde, though they should go to the deuill for it: and so be some innocents knyt up; and some offenders delyuered, some titles of inheritaunce lost, against al iustice and right.' He speaks then of the corruption of sheriffs, and says justly:—'This corruption, of it be not loked to, will make this order, which was the best that could be, the wickedest that can be.' (N.B. The work is not paged, but see the titles, 'Against Racking,' 'The Questmongers,' &c. on the margin.) I suspect strongly, from such a state of things, that the trial by jury, though warmly esteemed by the high classes, was not at that period much liked by the middling and lower. Elizabeth, therefore, by proposing such a scheme as the visitation, bespoke respect for the great body of the people, and a desire to protect them from the power of the aristocracy; but the latter clung to a system which gave them such influence.

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thus intimated at the dissolution of that parliament, he proposed, in the queen's name, at the opening of the next, but he introduced the topic by telling them that 'he left it to their judgments.'* Had Elizabeth's influence been really so great in parliament as has been imagined, she could have had little difficulty in carrying a measure which she appears to have so much desired; but it struck too forcibly against the power of the aristocracy to be listened to, and it never was heard of again till about the year 1594, when Burghley gratified his mistress by the speech referred to. It cannot be imagined, however, that he could advise her to attempt a measure without parliament, which she could not accomplish with it; and therefore we must presume that her absolute power was to be exerted through her grand council. Elizabeth was so pleased with the speech, that she desired a copy of it; but the scheme seems never to have been thought of more.†

Senti-
ments of
the age
regarding
the Eng-
lish consti-
tution.

We have now examined the grounds upon which Mr. Hume conceived that the English government bore some resemblance to that of Turkey, as well as given an account of the particular institutions and usages of that period; and it remains to make a few remarks upon his assertion, that the established principles of the times attributed to the prince such an unlimited and infeasible power, as was supposed to be the origin of all law, and could not be circumscribed by any. In support of this statement he refers to the homilies, which, he observes, inculcate absolute obedience; and thence he

* D'Ewes p. 194.

† The whole of Burghley's speech is in the grossest strain of adulation, for that celebrated individual, though a great statesman, was a thorough courtier, and he does not advise that the thing should be immediately attempted. 'How the time fitteth now for it,' says he, 'I know not, neither is it meet for me to aspire

thereunto.' I should conceive that, at the council board, men meet for business, not to make speeches, and that Burghley in his general conduct must have done so; but this is a mere harangue, without point or immediate object, flattering the queen, yet enigmatical (*Strype's Annals*, vol. iv. No. 164).

cludes that people complained with small reason in next age, 'because some court chaplains were permitted to preach such doctrines; but there is,' continues the historian, 'a great difference between these sermons and courses published by authority, avowed by the prince and council, and promulgated to the whole nation.' Indeed, we must admit that there was a decided difference in the cases. The homilies against disobedience and rebellion were prepared in consequence of, and immediately after, the northern rebellion, when the fears of the best patriots alarmed them with the idea of a return of the state by a religious faction, and when, therefore, they desired the assistance of religion to support the whole frame of the civil government, which zeal of a different kind would have torn to pieces.* The queen did not then attempting to subjugate the nation by force without the concurrence of parliament, but openly showed herself its head. In the next age, the court chaplains preached up damnation to those who pretended to assist the prince in assuming to himself the whole powers of the legislature, after he had quarrelled with his subjects; nor were they barely permitted to preach, but keenly encouraged in that pious undertaking. We have already shown that, instead of that tameness of which the historian has attributed to the age, there was a very numerous party, whose doctrine savoured of republicanism, and that their writers maintained bold sentiments about deposing princes. The learned author has said that the English were not content with enjoying any political advantages beyond their natural neighbours, and has remarked that he has not found any writers that speak of the English government as anything else than an absolute monarchy. But his research has been limited, or his inattention, for proofs of this are to be found in most writers of

* Strype's *Annals*, vol. i. p. 403.

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the age. Fortescue's work, '*De Laudibus legum Angliæ*,' was printed in Henry VIII.'s reign, and was then referred to by lawyers,* nay, was even quoted from the bench in Mary's reign.† In 1567, an edition in Latin and English was published, and dedicated by the translator to one of the judges of the Queen's Bench; and in 1599, the translation was published alone, with the following title—'*A Learned Commentary of the Politic Laws of England, wherein, by most pithy reasons and demonstrations, they are plainly proved to excel, as well the civil laws of the empire, as also all other laws of the world; with a large Discourse of the difference between the two Governments of Kingdoms, whereof the one is only regal, and the other consisteth of regal and politic administration conjoined.*'‡ Did no other document remain, which, fortunately, is not the fact, this of itself would refute Mr. Hume's notion. We have already referred to Smith's '*Commonwealth*,' and to Hayward's '*History*,' and we shall not return to them. Many passages might be quoted from various works published in Elizabeth's time, but we shall content ourselves with the following: Aylmer, afterwards Bishop of London, in the tract which he published anonymously in answer to Knox's '*First Blast of the Trumpet against the Monstrous Regiment of Women*,' defends female government in England expressly on the principle of the superiority of the English government, where the laws governed the magistrate, not the magistrate the laws. 'Well,' says he, 'a woman may not reigne in England: better in England then any where, as it shall wel appere to him that without affection will consider the kinde of regiment: whyle I conferre ours with other as it is in itselfe, and not maymed by usurpacion, I can fynde none either so good or so indifferent. The regiment of England is not a mere

* Prolog. Johan. Rastall in laudem Legum, anno 5 Henry VIII. to Le Liv. des ass. en temps du Roy Edward III.

† To show the meaning of a word

(Plowden's *Coms.*, case of Buckley, 1 Ph. & M. vol. i. p. 125, edit. 1816).

‡ *Biog. Brit.* and Chalmers' *Biog.* title Fortesc.

monarchie, as some for lacke of consideracion thinke, nor a mere oligarchie, nor democratie, but a rule mixte of all those, wherein ech one of these have or shoulde haue like authoritie. Thimage whereof, and not the image, but the thinge in dede, is to be sene in the parliament hous, wherein you shal find these 3 estats. The king or quene, which representeth the monarche; the noble men, which be the aristocratie; and the burgesses and knights, the democratie. The verye same had Lacedemonia, the noblest and best city gouerned that euer was; thei had their kings, their senate, and Hippagretes, which wer for the people. As in Lacedemonia none of these could make or breake lawes, order for warre or peac, or do any thing without thother, the king nothinge without the senate and commons, nor either of them or both withoute the king (albeit the senate and the ephori had greater authoritie then the kinge had). In like maner, if the parliament use their priuleges, the king can ordein nothing without them. If he do, it is his fault in usurping it, and their follye in permitting it.' 'But to what purpose is all this? To declare, that it is not in England so daungerous a matter to have a woman ruler as men take it to be.' 'If, on thother part, the regiment were such, as all hanged uppon the kinge's or quene's wil, and not upon the lawes wrytten; if she might decre, and make lawes alone, without her senate; if she iudged offences accordinge to her wisdom, and not by limitation of statutes and laws; if she might dispose alone of war and peace; if, to be short, she wer a mere monark, and not a mixte ruler, you might, peraduenture, make me to feare the matter the more, and the les to defend the cause. But the state being as it is or ought to be (if men wer worth theyr eares), I can see no cause of feare.* He afterwards presents a picture of the wretchedness of the French, and compares their condition, and that of other states, with

* *An Harborowe for Faithful Subjects*; title on margin—'It is lesse daunger to be gouerned in England by a woman than any where els.'

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the situation of England.* Thus much for Aylmer. Cartwright, in defending his system of church government, which he, of course, calls divine, says, 'The church is governed with that kind of government whiche the philosophers, that wryte of the best commonwealths, affirme to be the best. For in respect of Christe the head, it is monarchie, and in respect of the auncients and pastours that govern in common, and with lyke authoritie amongst themselves, it is an aristocratie, or the rule of the best men; and, in respect that the people are not secluded, but have their interest in church matters, it is a democratie or a popular estate. An image whereof appeareth in the pollicie of thys realme; for in respect of the Queen her maiestie, it is a monarchie, so in respect of the most honourable counsel, it is an aristocratie; and having regard

* 'The husbandman in Fraunce, al that he hath gotten in his whole life, louseth it upon one day. For when so euer they haue warre (as they are neuer without it), the king's soldiers enter into the poore man's house, eateth and drinketh up al that euer he hath, geueth their horse his corn, so longe as it lasteth, without paying a farthinge, and neuer departeth so long as there is any thing left in the hous. This was the maner: but this king hath amended it with the wurse, for his souldiers come not thither, but his rakehels thofficers, which pare them even to the bones. The pore man neuer goeth to the market to sell any thing but he paieth a tolle, almost the half of that he selleth; he eateth neither pigge, gose, capon, nor hen, but he must pay as much for the tribute of it there as it might be bought for here. O unhappy and miserable men that liue under this yocke. In Italy, they say, it is not much better; the husbandman be there so rich, that the best coate he weareth is sacking, his nether stockes of his hose be his cwn skin, his diet and fare not very

costly,' &c.—'In Germanie, thoughte they be in some better case than thother, yet eat they more rotes than flesh,' &c.—'Now,' addressing himself to his countrymen, 'compare them with thee, and thou shalt see howe happye thou arte. They eat hearbes, and thou beefe and mutton; thei rotes, and thou butter, chese, and eggcs. Thei go from the market with a sallet, and thou with good fleshe fill thy wallet. They lightlye neuer see anye sea fish, and thou hast thy belly full of it. They paye till their bones rattle in their skin, and thou layest up for thy sonne and heir' (*Id.* Title on margin—'How the French Pezantes bee handled').

Dr. John Ponet, in *A Short Treatise of Politique Pouuer, and the True Obedience which Subjects owe to Kynges*, enters upon an enquiry into the origin of political authority, its absolute or limited nature, and the limits of obedience, and even maintains the right to depose and punish tyrants. Yet this doctor was first Bishop of Rochester, and afterwards Bishop of Winchester, under Edward VI.

to the parliament, which is assembled of all estates, it is a democratie.*

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Harrison, who published in 1577, gives this account of the parliament:—‘This house hath the most high and *absolute* power of the realme; for thereby kings and mightie princes haue from time to time beene deposed from their thrones; lawes either enacted or abrogated; offenders of all sorts punished; and corrupted religion either disannulled or reformed. To be short, whatsoever the people of Rome did in their *centuriatis* or *tribunitiis comitiis*, the same is and may be doone by authoritie of our parlement house, which is the head and bodie of all the realme, and the place wherein euerie particular person is intended to be present, if not by himselfe, yet by his aduocate or attornie. For this cause also any thing ther enacted is not to be disliked, but obeied of all men without contradiction or grudge.’† No language can be stronger than this; but as Mr. Hume has brought together every circumstance which could convey a contemptible idea of parliament, we shall make a few observations on that point, and produce some instances to prove the general spirit that pervaded that assembly.

In the previous chapter we have traced the causes of the influence which the Crown then enjoyed in the state: it remains to say, that Elizabeth, having had certain powers in regard to religion devolved upon her, objected to the introduction of bills which tended to abridge her authority; and, in the course of her reign, even sent members to the Tower who disobeyed her injunctions on this head, as well as some who insisted upon her marriage, and her naming a successor, &c.‡ That the proceeding

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* *Reply to Whitgift*, p. 35, and also p. 145.

† Harrison's *Description of England*, in Holinshed, vol. i. b. ii. c. 8. p. 173 (see Plowden's *Coms.* title Prerog., regarding the power of the Crown).

‡ This stretch of prerogative may

be said to have been as directly against the liberty of the subject in his private capacity, as contrary to the privileges of parliament, and therefore seems to contradict what we have said about the power to imprison; but the fact is, that these members did not try the matter at

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was unconstitutional, no one doubted; and, in the 13th of her reign, when she first attempted an encroachment upon the privileges of the Commons, by ordering a member to abstain from attendance in his place till he received further orders, the circumstance created such a flame in the Lower House, that she instantly restored the member; but her popularity and influence enabled her to repeat the measure, and even to send the members to the Tower. Not choosing, at such a moment, to contest the matter with the Crown, he submitted to the hardship.

In the year 1566, Mr. Onslow, then speaker of the Commons, *in his address to the Throne* at the conclusion of the session, pronounces a panegyric upon the common law. 'For,' says he, 'by our common law, although there be for the prince provided many princely prerogatives and royalties, yet it is not such as the prince can take money or other things, or do as he will at his own pleasure, without order; but quietly to suffer his subjects to enjoy their own, without wrongful oppression, *wherein other princes, by their liberty, do take as pleaseth them.*' 'He tells her, that, as a good prince, she was not given to tyranny contrary to the laws, had not attempted to make laws contrary to order, but had orderly called this parliament, who perceived certain wants, and thereunto had put their helping hand,' &c.* Onslow was, at the very time, though prolocutor of the Commons, the queen's solicitor;† and his speech was so far from giving offence, that, while the Commons were reprehended for having trenched upon the prerogative, by questioning her right to grant patents for monopolies, &c., it was pronounced wise and eloquent. To smooth down and justify the

law, but submitted to injustice—a course, perhaps, the most prudent under all circumstances. The courts of justice, therefore, still remained uncontaminated with any precedent contrary to law.

* D'Ewes, p. 115.

† *Id.* pp. 96, 121. Onslow alleged that, as solicitor, he was not fit to have a place in the house, far less to be speaker (*Ib.*).

reprimand, the lord-keeper, in her majesty's name, tells the parliament that 'she meant not to hurt any of their liberties.'* At the opening of the next parliament, in the 13th of that reign, both houses were informed from the Throne that the first reason for calling them 'was to establish or dissolve laws as best should serve for the governance of the realm ;' and that, 'because in all councils and conferences, first and chiefly, there should be sought the advancement of God's honour and glory, as the sure and infallible foundation whereupon the policy of every good public weal is to be erected and built, &c., therefore they were to consider whether the ecclesiastical laws concerning the discipline of the church be sufficient or no, and, if any want should be found, to supply the same.'† Now, it will not be forgotten that it is chiefly on religious matters that Elizabeth's government has been censured : it has even been alleged that a divine right on that head was arrogated by the Crown. The lord-keeper, who delivered the royal address, reminded the parliament in no less liberal terms of their duty, in reforming, abrogating, or altering the temporal laws. It was even treason by an Act of that queen to deny that parliament had power to determine the succession, or other matters regarding the Crown. 'It were horrible to say,' observed Mr. Mounson, in that very session, 'that the parliament had not authority to determine of the Crown, for then would ensue, not only the annihilating of the statute 35 Henry VIII., but that the statute made in the 1st year of her majesty's reign, of recognition, should also be void.' 'For the authority of parliament,' said Serjeant Manwood, on the same subject, 'it could not, in reasonable construction, be otherwise ; for who should deny that authority, denied the queen to be queen, and the realm to be a realm.'‡ It was during this session that Mr. Strickland, for having introduced and pressed a bill about religion, which was

* D'Ewes, p. 115.

† *Id.* p. 137.‡ *Id.* pp. 164, 165.

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said to be injurious to the prerogative, was summoned before the council, and commanded to attend their further pleasure, and in the meantime not to return to the house; but, as has just been said, this infringement of their privileges was taken up with so high a spirit, that though the ministers affected to defend the restraint, the member was restored on the following day.* Mr. Yelverton, in arguing for the liberty of the house, and representing the danger of the precedent, if they did not vindicate their privileges, said that 'all matters not treason, or too much to the derogation of the imperial Crown, were tolerable there, where all things came to be considered of, and where there was such fulness of power, as even the right of the Crown was to be determined, and by warrant whereof we had so resolved. That to say the parliament had no power to determine of the Crown, was high treason. He remembered how that men are not there for themselves, but for their countries. He showed it was fit for princes to have their prerogatives, but yet the same to be straitened within reasonable limits. The prince, he showed, could not herself make laws, neither ought she, by the same reason, break laws.'† He concluded with defending Strickland's bill. Now, though one member argues that the house ought to petition the Throne as the only way to obtain redress, not one courtier rose to object to these general principles. Peter Wentworth, in the 18th of that reign, was committed to the Tower by the house for undutiful expressions towards the queen; but though he defended what he had said, instead of showing regret for it, her Majesty interposed in his favour, and restored him to his place. Now, it is remarkable that the general positions which he laid down, as that the prince must be under the law, for the law makes him king, &c., never were impugned even by the council.‡

* D'Ewes, pp. 175, 176.

† *Id.* p. 175. Liberal speeches, this session, were made by many members.

‡ Wentworth's speech commences at p. 236, and extends to p. 241 of D'Ewes' *Journal*. That the reader may be apprised of the irreverent

We have perhaps said enough, but as the learned historian has repeatedly stated that the English did not suppose that they enjoyed superior privileges to their neighbours, we shall further observe—1st, that if the people enjoyed privileges, as it is evident they did, it would not lessen our opinion of their enjoyments, that they were unacquainted with the situation of the continental states, and that it would be incumbent on Mr. Hume to prove that France enjoyed anything of the kind. 2ndly, that the wretched condition of France, governed and taxed at the will of the prince, and oppressed by foreign military, seems to have been a fact with which most men were acquainted, and that proofs of it not only occur in books, but in the journals of parliament. Sir Humphrey Gilbert; in support of the prerogative to grant

words spoken of her majesty, upon which he was committed by the house to the Tower, we shall transcribe some passages. He says, 'that God was, the last session, shut out of doors; but what fell out of it, forsooth? His great indignation was therefore poured upon this house, for He did put it into the queen's heart to refuse good and wholesome laws,' &c. 'It is a dangerous thing in a prince to abuse his or her nobility and people, and it is a dangerous thing in a prince to oppose or bend herself against her nobility and people. And how could any prince more unkindly intreat, abuse, oppose herself against her nobility and people than her majesty did the last parliament?' (N.B. — She refused her assent to certain laws.) 'Is this a just recompense in our Christian queen for our faithful dealings? The heathen do requite good for good, then how much more is it to be expected in a Christian prince? And will not this her majesty's handling, think you, Mr. Speaker, make cold dealing in any of her majesty's subjects toward her again? I fear it will. And hath it not caused many already, think you, to seek a salve for the head that they have broken?

No estate can stand where the prince will not be governed by advice. And whatsoever they be that did persuade her majesty so unkindly to intreat, abuse, and oppose herself against her nobility and people, or commend her majesty for so doing, let it be a sure token to her majesty to know them for traitors and underminers of her majesty's life, and remove them out of her majesty's presence and favour' (p. 239).

Whoever will read the examination of Wentworth by a committee of the Commons (p. 241 *et seq.* see p. 244), will be satisfied that the ground of commitment to the Tower regarded these and some other expressions, and that 'the fine spirit of liberty' which his speech breathes was not the cause. This happened in the 18th of the queen.

See the proof of the spirit of Paul Wentworth in the year 1566 (p. 128). See further, too, the manly spirit of parliament in discussing matters, notwithstanding several restrictions (p. 130).

No one dared to answer in the negative the constitutional queries of Wentworth in the 28th and 29th of the queen, who thought the liberties of the house infringed.

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patents, advised the house, in language similar to what was adopted in a future reign, to abstain from such topics, lest 'her majesty might look to her own power, and thereby finding her validity to suppress the strength of the challenged liberty, and to challenge and use her power any way, to do as did Lewis of France, who, as he termed it, delivered the crown there out of wardship,* which the said French king did upon like occasion. *He also said that other kings had absolute power, as Denmark and Portugal*, where, as the Crown became more free, so are all the subjects thereby the rather made slaves.'† This speech was disliked, but no notice was taken of it at the time. At the next meeting of parliament, however, on a question about the residence of burgesses within the boroughs they represented, a member, after stating to the house that it belonged to them 'to consider of all, and, as occasion may serve, to alter, constitute, or reform all things as cause should be,' alludes to Gilbert's speech in the following terms: 'We know that such as have spent their whole time in service, or have seen only the manner of government of other nations, and can tell you how the Crown of France is delivered out of wardship, or otherwise tell a tale of the King of Castile and Portugal, how they, in making laws, do use their own discretion, the King of Denmark useth the advice of his nobles only, and nothing of the commons: or can point you out the monstrous garments of the common people in some parts of Germany, or the mangled commonwealth of the allies, or shadows of the great cities, which now are to be seen in Italy; surely all those men, except they know also our own homes, are not to be trusted to conclude for our home affairs.'‡ Wentworth, on a future

* Mr. Hume, in the body of his history, quotes this very speech; but he, unfortunately, stopped at the word *wardship*, and thus overlooked the rest of the passage, which might have prevented him from taking so erroneous a view of the English

government in that age. While, too, he alludes to Wentworth's observations on it, he overlooks the remarks of another member.

† *Id.* p. 168.

‡ D'Ewes, p. 169.

day, declared Gilbert's speech to be an injury to the house, and reprobated that individual in the coarsest terms for his disposition to flatter and fawn upon the prince, comparing him to the chameleon, which can change itself into all colours save white; 'even so,' said he, 'this reporter can change himself into all fashions save honesty.*' No evidence can be more direct or complete than this.

We have now travelled over a vast variety of ground, and it must be apparent that, though there were some institutions, as the Star-Chamber, &c., not consonant to the genius of a free government, and occasional proceedings of a dangerous kind, the grand constitutional principles were clearly defined as well as recognised by the monarch in the general course of administration.†

* P. 175.

† In note D, the reader will find some additional matter upon this subject, and a more particular examination of Mr. Hume's statements. We have reserved for that note also, some observations regarding the opinions of the grand reformers on the Continent, about civil liberty, with the sentiments prevalent in Scotland.

In a note to p. 442, ch. 44, Mr. Hume has made some remarks about the practice of addressing and serving the monarch on the knee, &c., and says, that Elizabeth's 'successor first allowed his courtiers to omit this ceremony; and, as he exerted not the power, so he relinquished the appearance, of despotism.' But I cannot discover on what grounds he has paid this compliment to James, who, he himself confesses, arrogated a divine uncontrolled right in his language, which his predecessors had not done. We learn from Sully, that James did not omit this ceremony; for Sully declares that he was not a little surprised at the service on the knee, when, as French ambassador, he dined with James (*Mem. de Sully*, tom. iii. p. 273, edit. à Paris, 1814); and it is incontestible, that Charles exacted

it and every observance in its utmost rigour. When the trial of that prince was determined on, the council of war ordered the ceremony to be withheld (Whitelocke, p. 385); and Charles is represented by his attendant, Herbert, to have felt it severely, saying that he was the first to whom that mark of respect ever was denied, and that in former times even subjects of high degree always received it (Herbert, p. 109). Now, it is utterly inexplicable how Mr. Hume should have missed this; for in describing the situation of Charles on that occasion, he says, 'All the exterior symbols of sovereignty were withdrawn, and his attendants had orders to serve him without ceremony.' At first he was shocked with instances of rudeness and familiarity, to which he had been so little accustomed. *Nothing so contemptible as a despised prince* was the reflection which they suggested to him. But he soon reconciled his mind to this, as he had done to his other calamities.' Thus, it was a calamity to him to be deprived of a ceremony which, in Elizabeth, it was tyranny to exact. Even Strafford, when lord-deputy of Ireland, requested an order that 'on days of meeting none but noblemen should come

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further than the drawing-chamber, that the gallery should only be free for those of the council, and that all their servants should stay in the great chamber, where they and all others were to be bare, as well as in the presence, there being there a state as well as in the other' (Straf. *Lit. and Dis.* vol. i. pp. 200 and 201). Bastwick's account of the reverence exacted by the bishops in Charles I.'s time, as well as of the pomp and state assumed by them, is probably caricatured; but the picture bears internal marks of having been taken from the life, and it is really ridiculous (see his *Litany*). The fact is, that in former times the manners were remarkably severe. Sons, arrived even at manhood, are represented as standing uncovered and silent in their father's presence; daughters, as standing at the cupboard in their mother's, or only kneeling on a cushion. Sully him-

self, though he was surprised at the service on the knee at the English court, reposed, while his family stood at a distance (Henry, vol. xii. p. 353). With regard to kneeling, though I confess I have attended little to these trifles, I apprehend, from several passages I have met with, that it was the old fashion, for which we have substituted bowing, and which is yet retained by the ladies, for the courtesy is just that ceremony mutilated, as bowing is a mutilated kind of prostration. Everyone remembers the following passage in Shakspeare:—

Off goes his bonnet to an oyster-wench;
A brace of draymen bid, God speed him well,
And had the tribute of his supple knee.

In the description of 'Queen Mab,' by Mercutio, he says:—

In this state she gallops night by night
On courtiers' knees that dream on courtiers
straight.

CHAPTER III.

TRACING THE PROGRESS OF SOCIETY, AND INVESTIGATING THE
VARIOUS CIRCUMSTANCES WHICH AFFECTED THE CONSTITUTION OF
ENGLAND DURING THE REIGN OF JAMES I.

WE have seen that, throughout all the fluctuations of society, the grand principles of the constitution had been till maintained. Circumstances had conferred great influence upon the Crown; but it had operated through the ancient channels of the government, and had thus reserved for the other branches of the legislature the right of vindicating public privileges, and redressing grievances, without innovating upon established principles.

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Though the free importation of manufactures, the laws against trading in grain, the injudicious attempts of the legislature to regulate the wages of labour, the enforcing of long apprenticeships to the most vulgar trades, and the domineering practice of granting monopolies, had impeded the progress of improvement, there had been still a great advance. The woollen manufactures flourished in a high degree; and some towns had risen to considerable opulence by commerce. Crowded streets, miserable dwellings, stunted food, filth—all evils in themselves—were yet attended with certain benefits to posterity; for, by occasioning plagues, and thus sweeping off a large portion of the population, they raised the wages of labour, and consequently the profits of stock, and, by unexpectedly opening rich successions, enabled many, by the accumulation of capital, to extend their concerns and improve their machinery. Leases of large tracts had improved the

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wealth of the country inhabitants;* and the demand for home manufactures, as well as for the articles of commerce, bearing a proportion to the increasing opulence, necessarily afforded employment to a number of hands, and more widely diffused wealth. While society was thus in a progressive state of improvement, in spite of much impolicy, the national prosperity was rapidly promoted by religious persecutions on the Continent. Antwerp, long famous for her manufactures, had annually furnished England to a large amount; but having been sacked in the year 1585, through the furious bigotry of the Spanish court, she no longer outrivalled the English in their own market, while a great portion of her rich and industrious inhabitants, driven from their native city, sought an asylum in that country, into which they imported their skill and capital.† Many articles formerly supplied by foreigners were now provided at home. The demand for manufacturing labour therefore increased, and, as the number who could purchase the necessaries of life augmented, a new spring was given to agriculture by the home consumption of the produce of the soil; while the improved state of the country population reacted in giving additional employment to the manufacturing classes. The general prosperity was accelerated, likewise, by emigration, particularly to the American colonies, which were established under James, and which operated not only in opening an outlet to the superfluous population, but in creating a new market for manufactures.

Towns give the tone to public feeling: there only genius, though elsewhere exerted, meets with its reward. Thither resort men of intelligence and independent fortunes, who naturally canvass the measures of government, and acquire a bolder and more decided character by the

* This is evident from Harrison; and from what Spencer says of leases in his *Account of Ireland*, as well as from the information we derive from various sources, I apprehend that

leases were more common in England in that age than now.

† Anderson's *Hist. of Commerce*, vol. ii. p. 158.

collision of sentiment. The citizens or burgesses, too, daily rising into greater independence, cultivate mental improvement, and, by the habits of public business which they acquire in conducting the government of their city or burgh, are naturally roused into attention to the great national affairs. This natural course of things may be counteracted; but, as in England, while the constitution was more popular than in other states, there was no standing army, and, besides, after the church lands were confiscated, there remained in the Crown few of those sources of influence that make it the interest of certain classes to support the administration in acts that otherwise they would oppose, the public spirit was daily invigorated by national prosperity.

The aristocracy having been reduced to a subjection to the laws, the inferior ranks had no longer an interest to encourage and support an arbitrary interference in the Crown, as calculated to shield them from subordinate tyranny, while the wretched country population, who, cast out of employment and subsistence, had deranged the order of society, and confirmed the power of the executive, having now been either employed or gradually consumed by famine, ceased to molest, in a violent degree, the independent inhabitants, and thus no longer allowed them to view any irregularity in the executive as a necessary evil, nor prevented a union of all classes for the security of their rights. As religion had been instrumental in vastly extending the influence of the Crown, it now operated in a contrary way. The rights to church lands being confirmed, the aristocracy, who perceived that they had nothing more to expect from that quarter, were no longer alarmed by their fears of losing their lands, nor seduced by their cupidity of acquiring more into an undue desire of supporting any proposition from the Throne. The principles of the Reformation also were too deeply rooted to make people tremble with terror at the idea of a Popish prince, though they were still justly apprehensive of such

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an evil, nor to regard a Protestant monarch with that reverence which the peculiar situation of Elizabeth inspired. Innovation, too, having become familiar, the higher classes did not, as formerly, recoil with horror at every new tenet; while, having imbibed the principles of the Puritan party to the extent at least of ceremonies and worship, they listened with less attention to the cry of the prelates about the tendency of popular opinion to violate the rights of property, particularly when they perceived that these high churchmen reviled as rebellious the justest opposition to the sovereign, and were inclined to serve the Crown at the expense of every constitutional principle.

As the public spirit rose, the Crown became more dependent upon parliamentary supplies, which, consequently, conferred greater influence upon that organ of the national voice; for the royal domains, which, in ancient times, had supported the ordinary expenditure of the monarch, had been successively much alienated, not in a trifling degree by Elizabeth herself, and no fresh plunder of the church promised to replenish the royal coffers. At the commencement of his reign, James endeavoured to procure a law prohibiting further alienations of the Crown lands; but the Commons, who either grudged supplies, expected a share of the domains, or foresaw the political consequences, refused the bill, and the king himself was far from pursuing in practice what he had anxiously desired to restrict himself to by law.* While the permanent revenue of the Crown was thus daily diminished, a more expensive establishment was introduced.

From all these circumstances, the dynasty of the Stuarts opened a new era in the government, and their chance of enjoying the affections of the community must have depended on their yielding to the more liberal notions of

* See Raleigh's *Prerog. of Parliaments*, p. 43.

the times, and never at least exceeding the limits of the constitution. But a free spirit in the people is apt to inspire an opposite one in the governors, who, mistaking the expression of the public feeling for its cause, conceive that illegal severity against every indication of freedom will quell the temper they dread, and therefore recal to mind, as a precedent for their ordinary administration, every isolated irregularity of former times, attributing obedience to any rare act of severity, when in truth the submission to the act arose from the train of events that had encouraged it. This misguided policy is not confined to princes: even statesmen in power are frequently the last to observe the changes in society which necessarily affect the government. Raised above the people, and occupied with intrigues for place, they either despise, or are ignorant of, the passions which agitate the general mass, and refuse concession till the hour of conciliation is past. An ambitious priesthood, who, with as much injustice, are more impolitic, perceiving that external pomp and ceremonies impose on mankind, cannot renounce them when they provoke disgust instead of veneration.* When, therefore, a prince exhibits a disposition to tyrannise, he seldom wants evil counsellors and coadjutors; and as James showed the first, he was plentifully supplied with the last.

At the accession of that monarch, though there was a party hostile to the hierarchy, the bulk of the Protestant community adhered to it, and would have been fully satisfied with a dispensation from certain ceremonies, which too forcibly reminded them of the religion they had renounced. This they had expected from the new monarch, whose Presbyterian education afforded a rational ground of hope: but the very circumstance on which they relied had been productive of opposite consequences.

* Lord Clarendon remarks, that affairs, of all mankind that can read 'Clergymen understand the least, or write' (*Life*, vol. i. p. 34).
and take the worst measure of human

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The Scotch clergy, full of the highest ambition, had converted the pulpit into a theatre for political declamation; and James had imbibed the bitterest hostility to everything which approached to the Presbyterian form of ecclesiastical establishment, declaring that, under it, Jack and Tom, and Dick and Will, presumed to instruct him in affairs of state. It was his misfortune to have received, under the tuition of Buchanan, more literature than he had understanding to digest, and therefore, while he could lay down, with considerable force, general propositions which seemed to imply an extent of intellect above the ordinary standard, the real effect of his acquirements was insufferable pedantry and self-sufficiency; proving that his general conclusions were borrowed from others, and foreign to the indigenous productions of his own mind. Hence, however, he imagined himself possessed of super-eminent wisdom; and though his power was circumscribed in most respects, while king of Scotland only, he supposed himself likewise the centre of all legitimate power. Under the dominion of such feelings, he regarded all Protestant nonconformity as importing a leaven of stubborn republicanism, and therefore resolved to allow not the slightest toleration to that class—a resolution in which he was confirmed by the impious flattery of the prelates, who, at the conference at Hampton Court, attributed to him immediate inspiration from heaven.* The nonconforming

* In his opening speech at the conference, the king congratulated himself on having reached the promised land, where he was not, 'as elsewhere, a king without state, without honour, without order, where beardless boys would brave him to the face' (Fuller's *Ch. Hist.* b. x. p. 8). The government of James has been excused on the principle of his having merely imbibed the principles prevalent in his time: but they were confessedly not prevalent in Scotland, where he had been educated, and where he wrote

his book entitled *The Law of Free Monarchies*, which, in every page, contains the most detestable principles; nor had he learned them from his preceptor, Buchanan, whose very books he eagerly put down, not on account of the reflections against his mother, which would have been both natural and excusable, but merely for the political sentiments. At the conference, he says:—'A Scots presbytery agrees as well with monarchy as God and the devil; then Jack and Tom, and Will and Dick, will meet and answer me and my council.

were persecuted, everywhere ridiculed and treated with the greatest contempt—a species of persecution which has been thought the most severe towards religionists, but which, in fact, operates with equal force upon mankind in general; and the moderate amongst the nonconformists, whose views extended no farther than to an abrogation of certain ceremonies, perceiving themselves designedly confounded with the party who were hostile to the hierarchy, naturally fell into their sentiments. Men cannot long venerate a system whence they derive nothing but persecution. They were confirmed, too, in their religious principles by the neighbourhood of the Scots; and in both their religious and political, by the success of the Dutch commonwealth. The same policy that actuated the court in such intolerance towards the non-conforming Protestants, occasioned a partiality to the

Therefore, pray stay one seven years before you demand that of me, and if then you find me grow purfy and fat, my windpipe stuffed, I will perhaps hearken to you, for that government will keep me in breath, and give me work enough. How they used the poor lady, my mother, is not unknown, and me too in my minority.' His maxim was, 'No bishop, no king;' and in conclusion he told the Puritans:—'If this be all your party hath to say, I will make them conform themselves, or else harry them out of the land, or else do worse.' The Geneva translation of the Bible had, in the preceding reign, passed through twenty or thirty editions, but James condemned it strongly, in consequence of some notes which favoured the right of the people to correct the prince, and he says, 'Never tell me how far you are to obey.' James showed some shrewdness in this business, but a want of dignity truly astonishing. The conduct of the prelates was detestable. Whitgift said he verily believed the king spoke by the special assistance of God's spirit. Bancroft fell on his

knees, and said, 'I protest my heart melteth for joy, that Almighty God, of His singular mercy, has given us such a king, as since Christ's time hath not been.' The Chancellor Egerton was more excusable in saying that he never saw the king and priest so fully united in one person (Howel's *State Trials*, vol. ii.; Fuller, b. x.; Neal's *Hist.* vol. ii. p. 18).

The Puritans were not even listened to, though specially summoned to argue the case, and Mr. Hume sneers at them for complaining, as if philosophical candour was to have been expected. But hear what the Solomon of the age writes on the subject, to Mr. Blake, a Scotchman:—'They fled me so from argument to argument, without ever answering me directly (ut est eorum moris), that I was forced to tell them that if any of them, when boys, had disputed thus in the college, the moderator would have fetched them up, and applied the rod to their buttocks' (Neal, vol. ii. p. 19). It is quite evident that this second Solomon ought never to have held a higher place than that of schoolmaster.

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Catholics,* which excited disgust and jealousy throughout the kingdom, and daily added auxiliaries to the dissenters. Religious ceremonies become justly contemptible as well as hateful when converted into instruments of arbitrary power.

The civil government of James was no less impolitic and arbitrary than his ecclesiastical. Though a foreigner, of a nation too that the English had been accustomed to despise, and the son of a queen who, with the universal approbation of the Protestant portion of that people, had suffered on a scaffold, he assumed the language of the vicegerent of heaven—responsible to God only for his actions, and whom it would be impiety to oppose in any of his pretensions, however inconsistent with the laws which made him king—however unprecedented and oppressive to the people.† Even the first actions of his reign were subversive of the fundamental laws. On his

* See Neal, vol. ii. but particularly pp. 38, 40 *et seq.* for an account of the persecution by James. It has been supposed that his government was milder than that of the preceding reign, but it is a mistake. It is true that the extent of the persecution has been denied by the court party; but, on the same principle that we doubt it in James's case, we ought in that of Elizabeth.

In his very first speech to parliament, James had the imprudence to acknowledge the Romish church to be his mother church, though defiled with some deformities and impurities. He declared that his mind was ever free from thoughts of persecution, as he hopes those *of that religion* have proved since his accession. He expressed pity for the laity amongst them, and said he would indulge their clergy if they would but renounce the pope's supremacy, and his pretended power to dispense with the murder of kings. He wished he might be the means of uniting the two religions, for, if they would but abandon their late corruptions, he

would meet them half-way. But then, 'as to the Puritans and Novelists, who do not differ from us so much on points of religion as in their confused form of policy and purity; those,' says he, 'are discontented with the present church government; they are impatient to suffer under any superiority, which makes their sect insufferable in any well-governed commonwealth' (*Id.* p. 27).

† Immediately after the discovery of the gunpowder treason, James thus addressed both houses of parliament:—'And now I must crave a little pardon of you, that since kings are in the Word of God itself called gods upon earth, and so adorned with some sparkles of divinity, to compare some of the works of God, the Great King towards the whole and general world, to some of His works towards me and this little world of my dominions.' He says, 'the Puritans are worthy of fire, because they deny salvation to Catholics.'

journey to London, he ordered a thief to be executed without the formality of a trial ; * and his first parliament, at its very commencement, were obliged to resist an infringement of their privileges, which, had it succeeded and been established into a practice, might have proved fatal to their independence. But as this subject, in itself of the utmost consequence, has been completely misrepresented, and as it has been alleged that the privileges of the Commons were at that period undefined—whence it has been inferred, and the inference necessarily flows from the premises, that their importance in the constitution was extremely small—we shall make no apology for pausing to explicate a point so vitally connected with the British form of government.†

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All writs for the election of representatives had been originally returned to parliament itself; but by the 7th Henry IV. they were made returnable to chancery, whence they were issued.‡ Though, however, the form of the writ was then altered, parliament invariably exercised its right of examining elections, and, at the opening of every session, the clerk of the Crown-office always attended the Lower House with the writs and returns, when committees were appointed for that purpose. During the long recesses usual in those days, vacancies frequently occurred; and, upon a suggestion to the lord chancellor, a writ was issued for a new election. This practice could not be productive of any ill effects, since the matter fell immediately under the cognizance of the house on its re-assembling, and the right of the new member was determined by its vote. During a session, however, a vacancy could not then, any more than now, be supplied without a previous order from the house directed to chancery. But in the 23rd of Elizabeth, a

* Stow, p. 821.

† It is impossible for me to read Mr. Hume's account of this matter without the utmost pain. Many of his other statements may be ascribed

to precipitation, &c., but I am afraid the artfulness shown here must be imputed to a different cause.

‡ *Journals*, April 3, 1604.

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proceeding, fraught with the most alarming consequences, was attempted, and which, to a certain extent, succeeded, though it may be observed, for the credit of the house, that its partial success was attributable to an irregularity which shall be explained. During the recess, the chancellor had issued writs for elections in the room of certain members who were alleged to be, either through sickness or foreign employment, incapable of attending; but when parliament met again, this gave rise to an immediate discussion, when it was argued on the one side, and supported by precedents, that foreign employment particularly did not forfeit a seat; but that admitting that these causes might warrant new elections, yet that such elections could only proceed by the order of the house itself upon information before them. On the other side, the Crown lawyers contended that it was sufficient to make a suggestion to chancery; that to question this, were to discredit the chancellor, and scandalise the judicial proceedings of that court; that wherever new elections were deemed requisite, if the chancellor sent out a writ upon any suggestion, to choose a new member in the place of an old, whether the cause were sufficient or not to remove the old, or the suggestion true or false, yet, that if a member were elected, the house was bound to receive him, 'and the old remain discharged, *until the matter were farther cleared up, on the examination and judgment of the house.*'* The new members were therefore received in the meantime, though one of the old members, who had been reported to be incurably sick, had recovered from his indisposition, and resumed his seat. But the following note by D'Ewes, the editor of the 'Journals,' is worthy of attention: 'Nota, that all this was done after the election of John Popham, Esq., the queen's solicitor, for prolocutor or speaker, but before his presentation to the queen, or her majesty's allowance of him.

* D'Ewes, pp. 281, 282.

The agitation of which question was, doubtless, either privately muttered in the house, or, if it were disputed openly, it was suddenly and unwarrantably done, in respect that the House of Commons have no power to determine or resolve of anything after the election of the speaker till he be presented and allowed, as may easily be collected by all precedents, both of later and former times. Neither did this opinion of the house, thus irregularly given, take any effect, because the contrary was resolved, March 18th, *postea*.* This irregular proceeding took place on the 19th of January, and only two days afterwards, the house, in another case, maintained their privilege on this point, and the chancellor himself, who was an old parliament-man, and still retained his favourable feeling towards the house, supported them in their resistance of innovation. A member was indicted of felony, and the chancellor was moved by suggestion to issue a new writ; but he declined it without an order from the house, who refused to remove the member till he were convicted, as it might be any man's misfortune to be unjustly accused.† On the 18th of March, the committee for elections returned their report regarding those who had been irregularly admitted during the investigation, and then it was solemnly resolved, that though the new members should be excused for their past attendance, yet that they thenceforth stood discharged of their rooms and places, 'in the stead of such other members not being dead, unless special order should be taken by the house to the contrary.' 'It was farther resolved, that, during the sitting of parliament, there do not, at any time, go out any writ for chusing any knight, citizen, burgess, or baron, without a warrant of the house directed for the same to the clerk of the crown, *according to the ancient jurisdiction and authority of this house in that behalf accustomed and used*.' But the Commons,

* D'Ewes, pp. 281-283.

† *Ib.*

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while they vindicated their privileges, performed at the same time what they deemed their duty to the public, by retaining two of the new members in the place of others who were proved to them to be incurably sick—a measure performed by a special order of the house, in virtue of the power reserved in their general resolutions.* In the 29th of Elizabeth, while the fate of the Scottish queen was the occasion for summoning parliament, a case occurred of a second writ having been issued posterior to the execution of the first, under the pretext that the election was too precipitately carried; and when the Commons began to investigate the matter, the speaker received from the Throne by the lord chancellor a message for the house, announcing that her majesty was sorry to learn that they had been troubled at their last meeting about the choice and return of knights for the county of Norfolk, a thing in truth impertinent for them to deal with, as the matter belonged exclusively to the lord chancellor, by whom the writs were issued, and to whom they were returnable; and that she had appointed his lordship to confer with the judges, and, upon a fair investigation of the subject, to adopt such a course for the new election as should be agreeable to right and justice. Much has been said about the tameness of Elizabeth's parliaments; but though, on minor occasions, they were too submissive, they showed, in this instance, that they both knew their rights, and could defend them when vitally invaded. Undeterred by the message, nay, rather inspirited by it in their duty, they proceeded to examine the case, and came to the following resolutions, which we shall present entire: '1st, That the first writ was duly executed, and the second election absolutely void. 2dly, That it was a most perilous precedent, that, after two knights of a county were duly elected, any new writ should issue out for a second election without an order

* *Journ.* p. 135; D'Ewes, p. 308.

from the House of Commons itself. 3dly, That the discussing and adjudging of this and such differences only belonged to the said house. 4thly, That though the lord chancellor and judges were competent judges in their proper courts, yet they were not in parliament. 5thly, That it should be inserted in the very journal-book of the house, that the first election was approved to be good, and the knights then chosen had been received and allowed as members of the house, not out of any respect the said house had or gave to the resolution of the lord chancellor and judges therein passed, but merely by reason of the resolution of the house itself, by which the election had been approved. 6thly and lastly, That there should be no message sent to the lord chancellor, not so much to know what he had done therein, because it was conceived to be a matter derogatory to the power and privilege of the house.* The Commons again exercised their right in three different cases, without dispute, in the 43rd of that queen.†

Thus the privileges of the Commons, maintained from the earliest times—for they were modified, not altered, by the 7th Henry IV.—were manfully vindicated from every attempt to infringe them, during a reign in which a variety of causes peculiar to it had concurred to confer extraordinary powers on the sovereign; yet a stranger is no sooner seated on the throne than he aims a blow at the very foundation of the people's rights. On summoning his first parliament, he issued a proclamation prescribing to the community the choice of their representatives, and, amongst other things, enjoining them strictly not to elect any outlaw, whether for debt or crime, and

* D'Ewee, pp. 393, 395-7. To weaken the force of this proof of spirit in the Commons, Mr. Hume says, 'This is the most considerable and almost only instance of parliamentary liberty which occurs during the reign of this princess' (ch. xlv.). Thus it ever is with this writer.

Does anything occur which bespeaks arbitrary government? it is immediately magnified into a general principle. Does the liberty of the subject clearly appear to be vindicated? a salvo follows.

† *Id.* p. 322, 4, 5, 7.

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threatening to fine and disfranchise the corporations who returned, and to fine and imprison the person who should take upon himself the place of knight, citizen, or burgess, not being duly elected according to the laws and statutes in that behalf provided, *according to the purport, effect, and true meaning of the proclamation.* This requires no comment; but it will be necessary to clear up the subject of outlawry as a disqualification. In the 39th of Henry VI. the judges had declared outlaws to be ineligible; but the house paid no regard to their opinion. In every case of the kind, however, they seemed to have examined the cause of the outlawry, and to have reserved the power of removing a member when it implied crime or infamy. Thus, in the 1st of Elizabeth, a member outlawed was charged with having defrauded his creditors, and the committee to whom the examination of the matter was entrusted, having made their report, the house was divided—not as to the effect of outlawry considered in itself, but as to the particular grounds of it in the case before them; yet the individual was admitted.* Another case occurred in the 23rd of that reign, and the ground of the outlawry having been examined, the person returned proved that all his debts had been honestly compounded for, and took his seat. In the 35th of Elizabeth, the Commons, after a great debate, came to the same resolution:† and it is extraordinary that no case occurs of any individual having been held disqualified on that ground. Having now explicated the subject, we shall proceed to the famous case which agitated the first parliament of James at its very commencement. Sir John Fortescue, an old counsellor, had

* D'Ewes, p. 48 (see the case of Goodwin and Fortescue in Howel's *State Trials*, vol. ii.).

† Mr. Hume's statement of this case is very erroneous. He says, that the admitting him because he proved that his debts had been incurred by suretyship, 'plainly sup-

poses that, otherwise, it would have been vacated on account of the outlawry.' Now, had outlawry been of itself a ground of disqualification, it had been enough to produce the record; the matter would never have been sent to a committee—a fact sufficiently proved in the other case.

started as candidate for Buckinghamshire, and was opposed by Sir Francis Goodwin, who proved successful. The court being anxious to defeat the election, the council and judges were immediately employed to devise the means, and they hit upon the outlawry of Goodwin, though unfoundedly, as the pretext. Upon this the election is declared null, a new writ issued, and Fortescue returned. But the house no sooner met than they restored Goodwin to his place. The king resented the proceeding, and instigated the Lords to desire a conference with the Commons on the subject ; but the latter having refused a conference on a question which exclusively regarded their own privileges, his majesty expostulates with them in the following terms, in which he fully develops his principles : ‘ He was loth,’ he said, ‘ to alter his tone, and that he should now change it into matter of grief by way of contestation. He did sample it to the murmurs of the children of Israel. He did not attribute the cause of his grief to any purpose in the house to offend him, but only to a mistaking of the law.’ ‘ He had no purpose to impeach their privileges ; *but since they derived all matters of privilege from him, and by his grant*, he expected that they should not be turned against him. That there were no precedents did suit this case fully ; *precedents in the times of minors, of tyrants, of WOMEN, of simple kings*, not to be credited, because for private ends. That by the law, the House of Commons ought not to meddle with returns, being all made into the chancery, and to be corrected and reformed by that court alone.’ ‘ By this course,’ says a member, ‘ the free election of the counties is taken away, and none shall be chosen but such as shall please the king and council. Let us therefore, with fortitude, understanding, and sincerity, seek to maintain our privileges. This cannot be construed any contempt in us, but merely a maintenance of our common rights, which our ancestors left us, and which it is just and fit for us to transmit to our posterity.’

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'This may be called a *quo warranto* to seize all our liberties,' said another. 'A chancellor,' observed a third, 'by this course, may call a parliament of what persons he pleases. Any suggestion, by any person, may be the cause of sending a new writ. It is come to this plain question, whether the chancery or parliament ought to have authority.' They therefore resolved to adhere to their former judgment; when they received a message from James 'that he commanded, as an absolute king, a conference with the judges;' from whom, by the way, he had already received an opinion favourable to his prerogative. This was calculated to bring matters to an immediate crisis, and perhaps at that particular juncture the Commons acted prudently in complying with the royal requisition. James himself presided at the conference, and had common sense enough to perceive the propriety of departing from his lofty pretensions. The dispute, in so far as it regarded the individual case, was compromised, both elections having been set aside, but the privileges of the house were vindicated from any similar proceeding in future. Some of the high-spirited members, however, censured the committee for yielding so far in the particular case without consulting the house, and moved that the words 'By the request of the king' should be inserted into their warrant for a new election; but the motion was lost.*

Mr. Hume has attempted to palliate the conduct of James in this instance by a most extraordinary argument, 'that there was reason to believe that this measure, being entered into so early in the king's reign, proceeded more from precipitation and mistake than from any serious design of invading the privileges of the parliament;' and he has asked, 'had the privileges of parliament been at that time exactly ascertained, or royal power fully limited, could such an imagination ever have been enter-

* *Journal*, p. 151 *et seq.*; *Parl. Hist.* vol. i. p. 908; *Howel's State Trials*, vol. ii. p. 91 *et seq.*

tained by him, as to think that his proclamations could regulate parliamentary proceedings?' In the first place, with regard to the alleged precipitation and mistake, it is only necessary to observe that, though such an excuse might be admissible for an error in the private affairs of life to which the person committing the mistake had been previously a stranger, it cannot be listened to in favour of a monarch, whose public acts ought to be performed by his servants, through whom he should receive instructions in all his concerns.* But this monarch evidently appears to have interposed personally in the matter, and to have been resolved to set the established and invariable practice as well as law at defiance. In the next place, if we answer Mr. Hume's queries in the affirmative, it will necessarily follow that we must pronounce every unconstitutional act of that king authorised by the precedents of former times, merely because it occurred in his. The conduct of James is no more extraordinary than that of a vain, foolish person, suddenly raised from beggary to affluence, whose eyes, dazzled with so unexpected an altitude, deceive him into a belief that his wealth is unlimited, and betray him into extravagancies which ten times his fortune could not support.† But, in the last

* James in 1616 went to the Star-Chamber, pretending that Henry VII., from whom he was doubly descended, had done the same; and the reason he assigned for not having done it sooner was, that 'though he was an old king when he came thither, and well practised in government from twelve years of age, yet here he resolved, with Pythagoras, to keep silence for seven years. That apprenticeship ended,' &c. Why did he not pursue the same principle in regard to elections?

† Every part of James's conduct verifies this: 'A prince,' says Roger Coke, 'so poor before he came to the Crown of England, that if he had not been supported by the pension which Queen Elizabeth allowed him, he could not have maintained

the garb of many of our English gentry; and being come to the Crown of England, not only the sacred patrimony of it was squandered and embarrassed upon debauched and profane favourites, but the people, otherwise oppressed with almost infinite monopolies and projects which the nation never before heard of, and as they were new, so were they all illegal; and all these to make his favourites rich, while he continued the poorest king that ever governed England. Jostled in his throne by the presbytery in Scotland, yet nothing less than sacred would down with him from the clergy in England, though his dissolute life and profane conversation were diametrically opposite.'

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place, he distinctly avowed his resolution to disregard the precedents, as having passed 'in the times of minors, of tyrants, of women, of simple kings'—a catalogue in which he could have had no difficulty in ranking any sovereign, since the characters of all were to be determined by his own voice. As, however, there had been only two women on the English throne, of whom the first could scarcely be meant by him—indeed, all the precedents took place under her sister—James must be considered as having distinctly avowed a purpose to govern on far more arbitrary principles than his immediate predecessor, whose administration has been so blackened to apologise for his, while the expression of contempt towards 'women' (a sneer which ill became his unmanly disposition, towards anyone, but especially towards Elizabeth, whose spirit so infinitely excelled his own), could not fail to give deep offence to a people who so fondly cherished the memory of their former sovereign.*

That the inexperience of James might form some apology for this part of his conduct, it would be necessary to prove that his subsequent government was, in the main, unexceptionable; but, unfortunately for his memory, it is too apparent that he proceeded to the last without amendment; and indeed, on this very subject it may be remarked, that he endeavoured to subvert the freedom of elections in another form.† His pretensions, too, were

* When Rosny, afterwards Duke of Sully, sat at table with James, that monarch not only spoke contemptuously of Elizabeth, but boasted that he ruled her council for a long time before her death! (*Mem. de Sully*, tome iii. p. 274.)

† Not only were undertakers employed by the court to carry elections for the Crown, but threats were resorted to, as may be seen from the following passage of 'a speech out of doors' (3 Car.): 'Where the law giveth a freedom to elect burgesses, and forbiddeth any indirect course to be taken in their elections, many

of the incorporations are so base-minded and timorous, that they will not hazard the indignation of a lord lieutenant's letter, who, underhand, sticks not to threaten them with the charge of a musket or a horse at the muster, if that he hath not the election of the burgesses' (Franklyn, p. 238). Mr. Hume treats the complaints of the Commons on this subject with contempt—'because it was the first infallible symptom of any established or regular liberty;' but undue interference of a certain kind was of an old date, though the Stuarts exceeded their predecessors

such as became an absolute monarch only. In 1610 he summoned parliament, then busy with an enquiry into grievances, to Whitehall, and told them that 'he did not intend to govern by the absolute power of a king, though he well knew the power of kings was like the divine power; for as God can create and destroy, make and unmake at His pleasure, so kings can give life and death, judge all and be judged by none; they can exalt and abase, and, like men at chess, make a pawn take a bishop or a knight; but that all kings who are not tyrants or perjured, will bound themselves within the limits of their laws, and that those who persuade them to the contrary are vipers and pests, both against them and the commonwealth. Yet that, as it is blasphemy to dispute what God might do, so it was sedition in subjects to dispute what a king might do in the height of his power. And as he will not have his subjects discourse of what he may do, so he will do nothing but what shall be consonant to law and reason.' But then he is himself to be sole judge of law and reason, for he commanded them 'not to meddle with the main points of his government, that was his craft, and it would be to lessen him; who had been thirty years at his trade in Scotland, and had served an apprenticeship of seven years in England.'* Far from profiting by this lesson, parliament remonstrated, and he soon dissolved them, after which he summoned no parliament for four years. With the two next he quarrelled, and imprisoned the leading members, or sent them on expensive foreign employments.

Of his disposition to exalt the Throne above the control of the legislature, he afforded many other convincing

in the means employed; and if they had not, the conclusion from Mr. Hume's premises is, that the instant the Commons began to acquire consequence, it was justifiable in the king to deprive them of it.

* Wilson in *Ken.* p. 682 (see also James's Works, p. 532). This speech

is much of a piece with one delivered by him in the Star-Chamber in 1610 (see Sanderson, p. 439). The impious babbling in the last is greater; the principles as detestable (see his *Law of Free Monarchies*, and *Basil. Dor.*).

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proofs during his reign. In ecclesiastical matters he assumed supreme power, and he struck at the very vitals of the constitution by issuing illegal proclamations with penalties, which were enforced by the Court of Star-Chamber,* while, by levying taxes without an Act of Parliament, he prepared the way for the disuse of that assembly. He, of his own accord, imposed new duties at the ports, and arrogated the right of doing so at pleasure—a pretension in which he was supported by venal statesmen and corrupt lawyers, who concurred in fabricating precedents to deceive the people: nay, his judges solemnly decided so monstrous a principle in his favour. Innumerable projects and monopolies were devised for raising money, but he was latterly obliged to pass an Act against them; forced loans, without the pressing emergencies which were used as an apology for them in the preceding reign, were resorted to; and the hateful measure of benevolence, which had been so much reprobated and so opposed even in Henry VIII., and so long discontinued, was revived; but, in spite of severities, such as ordering one Barnes, a citizen of London, to carry a despatch to Ireland—practised to force men to contribute—the scheme was, from the people having supported each other's resolution to resist it, very unsuccessful.† Other illegal measures might be specified, but we confine ourselves chiefly to such as are of the most appalling nature, and directly subversive of the constitution.

Thus, James was so far from yielding to the more liberal views of the times, that he made pretensions and acted upon principles which would not have been long submitted to at any previous period. This has been thought irre-

* Howel's *State Trials*, vol. ii. p. 524 *et seq.*

† Wilson, p. 696. Mr. Hume asserts openly, in regard to this reign, that benevolences had been common in all former reigns; but he quotes no authority, nor had he done so in

the original work—*History of James I. and Charles I.*—though he did not intend to carry the history further back. The truth is, that it was impossible for him to have a proper knowledge of the history within the time he took to write it.

concilable with the natural timidity and indolence of his character, and been most strangely used as an unanswerable argument for concluding that the government, previous to his accession, had been arbitrary;* but his timidity and indolence appear to have partly driven him into that course. Irritated by opposition and want of respect during his residence in Scotland, he consoled himself with forming a theory absolved from restraints upon his prerogative—a theory which, in its worst features, he subsequently practised upon that nation; and when we reflect on the pernicious influence of the Scottish aristocracy, we might not have been disposed to condemn the monarch for desiring such vigour in the executive as should enable him to curb their lawless proceedings, had he not afterwards proved himself unworthy of power by abusing that which devolved upon him over Scotland by his accession to the English Crown. In England he had anticipated far greater authority; and when he perceived that, from the particular sources of influence which had operated on parliament under the Tudors having been exhausted, that assembly, supported by the nation at large, were prepared to assert their rights with a higher hand, apprehensions of a different kind alarmed him. During the intervals of parliament, matters seemed to proceed smoothly, as the cry of discontent was seldom permitted to reach the royal ear, and was besides attributed to the arts of the parliamentary leaders, who were accused of encouraging the popular sentiment as a support to their own designs; but while his temper could not easily brook opposition, nor part with authority, and his indolence made him shrink from the idea of a contest, James descried

* I believe that, in all courts, those who have ever been for refusing concession at a critical juncture, and resorting to sanguinary measures, will be found to have been the most cowardly; and it is natural. Their fears suggest to them danger in the popular spirit, and they would em-

ploy the moment of power in crushing those they dread. A truly brave man, on the other hand, if he possess common honesty, coolly surveys the ground, and, as his fears do not urge him to improper measures, nor blind his judgment, he sees the real danger, and avoids it by conciliation.

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no common danger in the measures of a regularly constituted body, whose resolutions men regarded as sufficient to control the Crown itself. Imputing to that assembly his own love of power, he inferred that, as their authority extended itself, however they might still gratify him with the name of king, they would be satisfied with nothing short of the whole power of the executive; and his reading furnished him with instances of monarchs who had been deposed by that supreme court.* His fears and indolence equally taught him to fly for shelter to arbitrary government, and, concurring with his predilections, induced him to direct his whole resources towards superseding the legislature. But he forgot that while he had not a single regiment to enforce his measures, it would have required a considerable army to complete his schemes; for though men may be driven, they are not to be persuaded, into slavery. James, however, appears to have deluded himself with the notion of defrauding the people of their rights.

Yet of all princes he was amongst the most poorly qualified for such a task. A foreigner ever labours under disadvantages, and these he increased by preferring Scotsmen to English offices—a course which lost him the usual patronage by which monarchs procure allies to aid them in usurpations upon the people's rights; and he squandered in folly the treasure which might have made him feared abroad and respected at home. Destitute not only of the qualities that win and the talents that dazzle and impose upon mankind, but of even the essential virtue of ordinary sincerity, he soon forfeited the confidence of his subjects; while in his whole conduct he evinced a total want, not only of common discretion, but of common decency—defects sufficient to sink genius itself, and fatal

* The arguments put by Raleigh into the mouth of the councillor, in his dialogue, were assuredly prevalent in his time; and the reader will

find how the courtiers apprehended deposing principles from parliaments (*Prer. of Parliaments*).

en of ordinary minds, but above all to one, 'the mystic of whose power,' to use his own words, 'is not lawfully disputed, which seems to wade into the weakness of the senses, and diminishes the mystical reverence of them sit in the throne of grace.'* His foreign politics were unpopular as his domestic. A matrimonial alliance with the house of Spain had alienated the affections of even Catholics themselves from Queen Mary; the remembrance of that age, together with the persecutions on the Continent, and the efforts of Spain against the religion and liberties of England, rendered such an alliance now for the most apparent the horror of all good Protestants; yet James pursued it with the utmost keenness—a proceeding the more inexcusable as, at a former period, he had only inculcated upon his son's mind the impropriety of marrying with a Papist. But this was only a part of a foreign policy which disgusted his subjects; for he at the same time thwarted all their predilections, and disappointed their hopes in regard to the French and German Protestants, and the claims as well as inheritance of his nephew-law, Count Palatine of the Rhine, who had espoused his only daughter. While, therefore, prelates and courtiers emulated each other in compliments to his inspired understanding, pronouncing him another Solomon sent to mankind, this king in vain endeavoured to suppress the voice of discontent and contemptuous reproach by his proclamations against talking of affairs of state; general clamour was loud in proportion to the attempts to strain it, the common complaint being, 'that Great Britain was less than little England; that they had lost

Anderson, p. 441. See Roger Williams, pp. 30, 71, 78, 151, as to his language, low sensuality, profane language, and ridiculous vanity. It is thought satirical; so is the account of things; but their account of things contains too many marks of truth to be regarded in the main, and is contradicted by others—by passages in

Clarendon, and in Hacket's *Life of Williams*, Tracts of the Times, as *Tom Tell-troath*, &c., and above all, by the correspondence betwixt the king and Buckingham, published by Lord Hailes (see also letters in M'Auley's *History*)—correspondence that ought never to have seen the light.

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the strength by changing sexes'—a just return for his affected contempt of women—'and that he was no king, but a fiddler's son, otherwise he would not suffer such disasters at home and so much dishonour abroad ; that he assumed the title of Defender of the Faith, yet suffered the Protestants of Germany and France to be extirpated ; that he might almost have purchased such a country as the Palatinate, with the money sent on embassies ; and that, by his promising the French Protestants assistance, he had only made them confident to their ruin.'*

It is unnecessary for us to do more than just observe, that when a prince, unsupported even by a regiment of guards, and who consequently stood by public opinion alone, had fallen into such contempt, arbitrary government could not long be submitted to ; that such absurd pretensions as the monarch made must either be abandoned or a convulsion be unavoidable.

In order to throw odium on the popular party of that age, and vindicate the house of Stuart, the former have been represented as a set of gloomy fanatics, whose discontent originated in their dislike of some ceremonies alone ; but this is a mistake, as the political motives, though intimately connected with the Reformation, would have operated independently of religious zeal. Had such, however, really been the fact, it was surely as unpardonable in the sovereign not to gratify them on that head as it would have been easy for him to have regained their confidence. That he should have apprehended danger from the ambition of the Puritan preachers, and therefore have opposed them, was to have been expected ; but the popular voice carried authority with it, which demanded respect, and the true way to destroy the influence of such preachers was to yield to the general wish of an abrogation of certain ceremonies, which at that time would most probably have given satisfaction. If it be alleged,

* Wilson, p. 748.

in defence of the monarch, that his conduct sprang from piety, then it must be admitted that the fanaticism that dictated the ceremonies was at least equal to that which opposed them, while there is a vast difference betwixt the feeling which stimulates a people to pursue their own way of worshipping their Creator and the presumptuous zeal that would force them to adapt their worship to the preconceived notions of an individual. But the apology cannot be admitted for James, whose ecclesiastical government was the result of political motives alone, of the same description too with those which led to so many infringements of popular rights; and hence the conduct of the nonconformists must likewise be ascribed to political as well as religious views. Since the ceremonies were enforced for the purpose of enslaving the human mind, it could not be doubted that every acquiescence would be productive of others, till the whole Catholic system were again entailed upon the nation. The contention, therefore, did not merely regard existing ceremonies, though these were disliked on their own account, but in both parties flowed from deeper principles. From such a contest, a patriotic freethinker, to whom modes of worship, abstractly considered, were indifferent, could not have stood aloof, but must have found himself called upon to array all his forces on the popular side, both to rescue the people from oppression, and to support religious tenets calculated to promote public prosperity. The leading men of that age, however, were warmly attached to the reformed religion, and they were necessarily alarmed when they discovered, in certain ceremonies, an earnest of a deeper invasion of the Protestant faith to advance the arbitrary designs of the court; while that those who were chiefly actuated by political motives might not evince lukewarmness in espousing the cause of the nonconforming party, the court industriously confounded them with that party, by branding with the name of Puritan all who asserted the national rights. Even decent conduct seems

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to have involved men in the same reproach.* The ridicule against this body has, therefore, been misplaced; at the worst, their principles, even abstractly considered, were at least as reasonable as those of the party they opposed, and it is a secret to none, that every party or sect will always contain adherents who push the common tenets absurdly far, and that such will ever be singled out by their adversaries for the purpose of attaching odium to the whole class. But, after all, it is extremely unphilosophical to determine the character of an age, or even of individuals, from their religious dogmas alone, unless they be hostile to the public good; and the indiscriminate condemnation of either, on that ground alone, perhaps bespeaks a species of bigotry, where it is not suspected (being thought impossible), not inferior to that which is held up to scorn.

In the preceding detail, sufficient causes of the popular spirit, which arose at this period, may be discovered, without imputing it, as has been done, either to the revival of classical learning or to the extraordinary talents of leading men. Wherever the human mind is uncramped by the combination of religion and politics, it requires little more than a fair opportunity to assert its independence—for human nature has undergone no change from the time of the Greeks and Romans—and that opportunity, aided indeed by other circumstances, was fast opening to the nation. Public habits were the best support of the Throne, and these the injudicious measures of the court shook to their centre; for, as the same habit of mind which inspired reverence for the monarchical branch of the constitution produced attachment to the popular, as well as to the privileges which had descended to the people from their ancestors, the court, by striking at them, necessarily lost the other. Far, then, from imputing the spirit of liberty to the revival of classical literature, which

* See Hutchinson's *Mem.* vol. i. p. 118 *et seq.*

produced no such effects in France, we may ascribe the high taste which popular characters had for the sentiments of antiquity to the freer spirit which other circumstances inspired. The knowledge of antiquity operates according to the medium through which it is viewed ; and in the bulk of the learned, who are eagerly advancing their own selfish ends, it only begets that supercilious arrogance which the pride of superior intelligence produces in naturally vulgar minds. The mass of the people have not leisure to devote themselves to the acquirement of classical literature, and yet, unsupported by them, individuals can do nothing. Indeed, it has been the mistake to ascribe infinitely too much to individuals, for great occasions create, or rather call forth, talents suited to them, while the highest genius is lost or unknown in unfavourable stages of society. When, however, talent is awakened into public life by genial events, it reacts upon the community, as the leaders, confirmed in their principles by studying the institutions and characters of antiquity, diffuse a portion of their own more exalted views through the general mass. But if knowledge was so employed by one set of public men, it was no less abused by another—amongst whom it is melancholy to rank Bacon himself, who not only wrote in defence of the king's right to impose duties on merchandise at his own will, but proclaimed his readiness to serve his master on any terms. In the year 1615, he, by letter, begged the chancellor's place, objecting to Coke for his popularity, 'as such were no sure mounters for his majesty's saddle ;' to Hobart, as no statesman ; and, says he, 'If you take my Lord Hobart, you shall have a judge at the upper end of your council-board, and another at the lower end, whereby your majesty will find your prerogative pent. For, though there should be emulation between them, yet as legists they will agree in magnifying that wherein they are best. For myself, I can only present your majesty with *gloria in obsequio* ; yet I dare promise, that if I sit

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in that place, your business shall not make such short turns upon you as it doth, but when a direction is once given, it shall be pursued and performed, and your majesty shall only be troubled with the true care of a king, which is, to think in chief what you would have done in chief, and not how for the passages.' *

Such language leads us to observe, that, in reviewing this reign, it is impossible not to feel far greater indignation at the ministers, whom the hope of preferment perverted from the path of duty, than at the monarch, whose situation and want of discretion form some excuse for his conduct.

When Bacon could act thus, it is not wonderful that the poets, who, with some—and those great—exceptions have generally been venal, should have prostituted their pens to recommend themselves to the court. The dramatic productions of that age afford unequivocal proofs of the spirit of the government. It has been said of Shakespeare, who wrote chiefly in Elizabeth's reign, that we nowhere meet with mention of English liberty in his works; and indeed nothing very striking on that subject was to have been expected from a poet who wrote for the court; but we expect, and meet with, liberal sentiments, while the most disgustingly opposite disgrace every page of his successors. Take this as an example of the first:—Henry VIII., when informed of the illegal contributions by Wolsey, is made to exclaim—

	Have you a precedent
Of this commission?	I believe not any.

* Bacon's Works, vol. iii. p. 280 (see also *Remembrances of his Majesty's Declaration touching the Lord Coke*, *Id.* p. 507). The objections to Coke were, that he opposed arbitrary measures and arbitrary courts; that his exposition of the law of treason was dangerous to the king; and that in his reports, which tended to cramp the prerogative, he had not attended to his majesty's

animadversions! Some have attempted to defend Bacon's conduct, by alleging the opinions of the times; but the answer to that is, that he endeavoured to raise his own fortune by holding up his conduct as opposite to that of Coke; declaring himself a person who supported the prerogative, while Coke wished to confine it!

We must not rend our subjects *from our laws,*
*And stick them in our will.** (Act i. sc. 2.)

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The doctrine of Shakspeare's successors may be estimated from the following passage by Massinger. Cozimo, great Duke of Florence, represented as a most virtuous prince, says—

We stand not bound to yield account to any
 Why we do this or that, the full consent
 Of our subjects being included in our will.

But it is, unfortunately, not on this point only that a marked difference exists. The plays of the one period are, generally speaking, unimpeachable in their morality, while those of the other are abominably obscene (in this respect Massinger's form an exception), and the Catholic doctrine is occasionally held up in them to veneration. And here it may be remarked, that though complaints of the decay of morality are common in all ages, there are too many proofs of the profligacy engendered by the court to allow us to indulge scepticism on this point.

In Mr. Hume's history of James I. we meet with the same general assertions about benevolences, imprisonments, proclamations, the dispensing power, and so forth, which have already been so fully examined by us; and though it will doubtless occur to the reader, that the author proceeded upon the assumption of having proved all those matters in the previous history, it is a singular fact that, in his first historical publication, which comprised only the first part of the history of the house of Stuart—and at that time he did not mean to go farther back—all those assertions occur unsupported by authority. It is not our pur-

Examina-
 tion of
 Hume's
 account of
 the senti-
 ments, and
 so forth, en-
 tertained
 during
 that age,
 of English
 liberty, &c.

* Some have imagined that this was written in James's time, because an allusion is made in Cranmer's prophetic speech to the union of the crowns; but that was clearly added afterwards, and the whole speech has justly been considered as a compliment to Elizabeth. In the first years of James's reign, the stage had taken great liberties, but he corrected

it. Thus Mr. Calvert wrote to Winwood, March 28, 1605:—'The plays do not forbear to present upon the stage the whole course of this present time, not sparing either the king, state, or religion, in so great absurdity, and with such liberty, that any would be afraid to hear them' (Winwood's *Mem.* vol. ii. p. 64).

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pose to resume consideration of those points ; but we shall be excused for a few remarks upon the statement regarding the opinions of the age, as to the extent of the prerogative.

The learned author has alleged that the right of issuing proclamations with the effect of laws, ' was established by uniform and undisputed practice, and was even acknowledged by lawyers, who made, however, this difference between laws and proclamations, that the authority of the former was perpetual, that of the latter expired with the sovereign who emitted them ;'* that when the king's power of levying new customs and impositions by the mere authority of his prerogative was disputed by the Commons, ' it is remarkable that, in their debates on this subject, the courtiers pleaded as a precedent the example of all other hereditary monarchs in Europe, and particularly mentioned the kings of France and Spain—nor was this reasoning received by the house either with surprise or indignation ; that the members opposite either contented themselves with denying the justness of the inference, or they disputed the truth of the observation ; and a patriot member in particular, Sir Roger Owen, even in arguing against the impositions, frankly allowed that the King of England was endowed with as ample power and prerogative as any prince in Christendom ;'† and that he, Mr. Hume, ' had not met with any English writer in that age who speaks of England as a limited monarchy, but as an absolute one, where the people have many privileges.'‡ That lawyers during James's reign should have asserted that proclamations had the authority of laws, is not wonderful ; for some of the greatest of that class, as Bacon and Davies, perceiving that the adoption of such principles opened the sure road to preferment, did not hesitate to promote their own fortune at the expense of all integrity : when their language is compared with that of

* Vol. vi. p. 52.

† Vol. vi. p. 73.

‡ Note Q, at the end of vol. vi. p. 568.

their predecessors, it is calculated to give us the worst impression of James's government. The language of authors also accommodated itself too much to the opinions of the court, and works of a contrary description were proscribed. But it would be a melancholy fact indeed if nothing of the spirit of their ancestors were discernible, either in parliament or in the writings of that age, particularly as the sentiments prevalent at that monarch's accession were thus expressed by the speaker of the Commons, a lawyer too, who had no wish to offend his new master. After telling the king that he hoped his majesty would long, Nestor-like, sit on the English throne, he says, 'The ark of government of which kingdom hath ever been steered by the laws of the same ; and these distributed to the jurisdiction of the several courts of justice ; the commanding and imperial court whereof is this your majesty's great and high court of parliament, by whose power only new laws are to be instituted, imperfect laws reformed, and inconvenient laws abrogated ; whose justice therein is such and so absolute, that no such laws can either be instituted, reformed, or abrogated, but by the unity of the Commons' agreement, the Lords' accord, and your Majesty's royal and regal assent. Only to your highness's prerogative, nullity, by your own disassent to their conclusions, belongeth ; for that this court standeth compounded of two powers, the one ordinary, the other absolute ; ordinary in the Lords' and Commons' proceedings, but in your highness absolute, either negatively to frustrate, or affirmatively to affirm ; but not to institute.'* If principles of this kind, which are sufficiently broad, and uttered, too, on an occasion which removes every suspicion of their not having been quite prevalent and understood on all hands, be found, at an after period of that reign, no longer to have apparently animated the Commons, we must form a melancholy opinion of that monarch's administration ; and merely conclude that,

* *Journ.* 22nd March 1603, p. 146.

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since the spirit that dictated free principles burst out with such force a few years afterwards, men only suppressed, though they did not forget, what belonged to a free people, till, by the mad pretensions of the court, an opportunity was, by a union of all the independent classes, brought about for correcting its abuses and usurpation. But the historian has allowed himself to fall into inconceivable errors on this subject, by having, through some fatality, singled out every isolated passage or expression that seemed to warrant his preconceived opinions, while he passes over the context, which places matters in so very different a light as to develop the highest principles of civil liberty.

The right of imposing new duties at the ports by the mere authority of the prerogative had been usurped by James, and decided, by venal judges, to be inherent in the Crown. The Commons had warmly taken up the subject before the dissolution of parliament in 1610, and their successors resumed the question where they had left it, in the beginning of the next parliament, which was assembled in 1614. A search was made by them into precedents, and it was resolved by the whole house, without one dissenting voice, that the king could not impose without the authority of the legislature.* The Commons, who managed the question with no less prudence than ability, desired a conference with the Lords upon it, that they might jointly petition his majesty 'with a remonstrance of their right;' and it is in their instructions to the members whom they nominated to conduct the debate at the conference, that the passage occurs on which Mr. Hume has grounded his assertion about proclamations having, admittedly, the effect of laws during the life of the monarch who emitted them. In the legal argument that had taken place in the Exchequer Chamber, various grounds for the pretended right had been advanced; and

* *Journals*, 12th May 1614, p. 81.

However unsubstantial these were, it was necessary to meet them; for since the judges maintained the usurped power of the Crown, there was, if the king did not make concession to parliament, no alternative but submission, or an appeal to that last resort which was tried in the next reign, and which is only justifiable when other remedies have failed, and when there is a fair prospect of success. On this principle the Commons acted—a principle that the historian appears, not only here, but elsewhere, to have overlooked, though it fully accounts for the line of argument adopted by them in this instance, as well as for that acquiescence in certain partial irregularities of former times, which affords the basis of his humiliating theory of the ancient English government. The Commons divided the argument into nine different branches, which were again split into minor ones, and they assigned one only to an individual, or to two or three conjoined; and, as James had claimed and exercised the power by means of proclamations, that point, with other matter, was assigned to one member, who was instructed to argue that his majesty had imposed for himself and his heirs by letters patent, but that this was strange, as proclamations were only obligatory during the life of the monarch who issued them, and therefore he could not impose but for his own life. The Journals are remarkably succinct, and indifferently expressed; but it is easy from this to infer the whole line of argument on that head.* Customs were said to have been originally imposed by the prerogative, and it was argued that the subsequent grants by parliament implied a liberality in the particular princes,

* *Journals*, 12th May 1614, p. 481. To prevent misconception, I shall here give the precise words of the *Journals*:—‘I. An introduction, briefly declaring matter in fact, and the state of the question.—Direction to him in three things, wherein we conceive the king to have, by misinformation, done other than any of his

ancestors. II. The time: for now by letters patent, and in print, these impositions set for him and his heirs for ever; which never done before: which strange: because no proclamation bindeth longer than the king’s life; so could not impose, but during his own life (p. 481).

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but could not derogate from the royal authority. The answer was, that if the ancient princes had done it, the right could only have been exercised through letters patent, as James himself had effected it; but that was inexplicable since these ceased to be obligatory with the life of the monarch who emitted them; and the mode in which the alleged right either was or could be exercised, proved that the inference, from the obscurity which hung over the origin of ancient customs, was erroneous. It is vain to argue that in this we have a proof that proclamations might be issued; for such a right has ever belonged to the Crown, under the condition that the proclamations shall be agreeable to the laws; and, though James himself arrogated a right above law—a pretension in which he was supported by Davies—the most politic lawyers, as Bacon, argued that proclamations for new duties at the ports were conformable to the common law, which had given that power to the monarch. If Mr. Hume were entitled to draw any conclusion from this in favour of proclamations, it could only be to the extent of imposing customs—the subject on which the passage had occurred, and to which it exclusively referred. But on that point we learn from himself that the Commons utterly denied the royal power; and had they done otherwise, James would soon have withdrawn the objection by new-modelling his proclamations. Did any doubt remain on this head it would be removed by the other branches of the argument—one of which was founded upon ‘the common law, the sinews of the body of the commonwealth, with some statutes strengthening it;’ another upon the cessation of any attempt to impose during the reigns of ten great princes, who could not be presumed to have taken as gifts from the people what they might have exacted of their own accord. How, then, Mr. Hume should have discovered, in this isolated passage, authority for stating that lawyers admitted proclamations to have the effect of laws, is inconceivable, and

our wonder is increased when we consider that he himself refers to a petition of grievances in 1610, to which, however, he has not done justice, wherein this very power is most directly declared to be destructive of the liberty of the subject—as contrary to ‘the indubitable right of the people of this kingdom, not to be made subject to any punishment that shall extend to their lives, lands, bodies, or goods’ (if it extend not to these, to what does it extend?), ‘other than such as are ordained by the common laws of this land, or the statutes made by their common consent in parliament.’* Thus much for proclamations.

James was the first English monarch who ever founded his pretensions upon the powers of foreign princes in regard to their subjects; and though the English people were perfectly aware of their privileges, some of the Commons, who perceived that a crisis was fast approaching, endeavoured to gratify the king’s vanity while they vindicated public rights, by acknowledging on the one hand that, in authority, he was not inferior to foreign princes; and on the other, arguing that, by the laws of other nations, the sovereign could not impose without the intervention of the three estates, any more than in England. This was, accordingly, one branch of the argument to be maintained at the conference, and it was undertaken by Sir Roger Owen, the very member who had ascribed to the English king equal power to that enjoyed by any other in Christendom.† The subject of impositions had been frequently

* See petition in Howel’s *State Trials*, vol. ii. p. 519 *et seq.*, particularly p. 544, with the list of illegal proclamations annexed.

† When Sir R. Owen made this admission, he stated that it appeared by many Acts of Parliament, the king could not impose; whence it follows that Mr. Hume’s statement rests, at the best, on an abuse of words. It was allowed on all hands that the English king could not make laws without parliament; and this member stoutly denied his

power to levy duties without a grant by the legislature. But, if he were thus restrained, it is ridiculous to talk of the unlimited extent of his prerogative; and the utmost that could be said on the subject is, that Sir Roger Owen, with some others, was not acquainted with the wretched condition of foreign states, though he showed himself perfectly familiar with the rights of his countrymen. The after debates, however, fully explain this matter.

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discussed in the Lower House, where many admirable speeches had been made on it, and the writings of Commines and Fortescue had been quoted in proof of the ancient superiority of the English government.* Some days after the motion for a conference with the Lords, when on another question it had been resolved that 'the parliament could not give liberty to the king to make laws,' the grand subject of impositions was again introduced: and Mr. Jones having observed that the king could no more impose duties for protection upon the sea than upon the land; that though the sovereign might restrain any man from quitting the kingdom, if danger were apprehended from him, yet he could not grant a dispensation for money; and that the power arrogated by the Crown would reduce the people to villanage,—Sir H. Wotton stated that he was troubled with Sir Roger Owen's part, as it would be found that, though the power of imposing belonged not to elective princes, it did to hereditary; that on this principle the emperor could only impose in imperial diets, and the King of Poland was equally restrained; but that every petty prince in Italy imposed by the mere authority of his prerogative. That the King of Spain could not impose in Arragon, where, at his coronation, they say, 'We, as great as you, make you king to rule us according to our laws;' yet that in Castile he imposed at discretion; and that in France the king imposed by virtue of his prerogative, and the last king, Henry IV., levied 14,800,000*l.* by a tax on salt, which he, at the same time, obliged every family to purchase. This member concluded with the remark, that an hereditary prince had greater power than an elective. To this Sir Roger Owen himself replied, that no prince in Italy anciently exercised such a power; and that, while he admitted the practice of

* See Yelverton's speech, in Howel's *State Trials*,—No. 737 of *Har. MSS.* is a copy of it,—with the remonstrance of the Commons prefixed (see also the *Journals* for Skele-

tons of Speeches this session, 18th April, pp. 466, 467; 5th May, pp. 472, 473, 475; 12th May, pp. 481, 482).

the kings of France and Spain, he maintained that the legal and constitutional principles of those monarchies, as appeared by their law books, denied such authority to the sovereign. He further observed, that the origin of kings was by election and *consent*. The secretary, on the other hand, stated, that though he did not mean to maintain the right of imposing, yet that it would appear, upon due examination, that *de facto* foreign princes did impose, and he must hold that they did it *de jure* till the contrary were proved. Three members then successively spoke on the popular side. The first, Sir Thomas Rowe, remarked that the dukedoms of Florence and Milan were mere tyrannies, and that the first king who ever imposed in Castile had authority from the cortes, which corresponded with our parliament. The next was Sir D. Diggs, who asserted that the true ground was *nolumus leges Angliæ mutare*, and all the rest was but illustration; ‘and to cross the unfit persuasions of some, which tell the king they do it in France and Spain, and he is as great as they.’ The third, who followed on the same side, was Sir Edward Sandys, who remarked how weighty impositions by prerogative were, since one prince had by a single tax levied 4,800,000*l.*, and enforced people to purchase the article: *That the King of France, and the rest of the imposing princes, also made laws which would in a short time bring all to a tyrannical course, with confusion both to prince and people,*’ a point which he illustrated by alluding to the death of the late king; that there was no sovereign who had not been originally elective; and ‘there was a double election of person and care’ (duty), ‘but both came in by consent of the people, and with reciprocal conditions between king and people;’ that a king by conquest might also be expelled whenever the people had power; and that it was no argument to say, that because the King of France imposed, the King of England might likewise.*

* *Journals* for 21st May, pp. 492 and 493.

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This language will not be denied to be boldly constitutional; and it was a fact taken for granted on all sides, that England enjoyed privileges beyond the continental states.

With regard to the writings of that age, it is scarcely necessary to observe, that if they really were all of the stamp described by Mr. Hume, it would only prove that the arbitrary government of James had succeeded for a season in crushing the liberty of the press—a measure which he evinced great anxiety to accomplish. But though in writings intended for the court there be too many proofs of a servile spirit, works of an opposite description found their way into the world. Not to allude to such as held up James to scorn,* we may observe that a new edition of Fortescue's work, '*De Laudibus Legum Angliæ*,' with notes by Selden, was published in 1617, and that Smith's '*Commonwealth*,' which, from the modesty of the author, had before that been only circulated in manuscript amongst the learned, was printed in 1609. Sir Thomas Overbury, in his '*Travels*,' makes observations upon the institutions of different countries, and remarks that the government of the united provinces resembled that of England; that the government of Flanders was more arbitrary, and that France was an absolute monarchy, where the prince might act at discretion.† But the very books to which Mr. Hume refers in support of his own theory, prove that France was in a very wretched condition

* In my former edition I specified *Tom Tell-troath* as of the number; but it had not, I apprehend, been known to the court: for on 14th December 1629, Sir Henry Vane writes thus from the Hague: 'There is come to my hands a scandalous wicked libel, under the title of *Tom Tell-troath*, and *The Practice of Princes*: the one casting great imputations upon the person and government of King James of blessed memory; the other upon the king our master, and his present government: all tending to

sedition. One of the books themselves I have thought fit to send by Mr. Carleton, endeavouring to find out the printer at what rate soever, and shall accordingly proceed with them as I shall have direction from your lordship's State Paper Office (France). My productions, denominated libels, were printed and circulated abroad at this period.'

† Overbury's *Travels*. The MS. in the library at Lambeth corresponds with that printed. He travelled in 1609.

in comparison to England. Davies' work on 'Impositions' has already been referred to by us; and though it be one of the most exceptionable performances in the language, and the author maintains the king's power to raise his prerogative above the laws, he states explicitly that it had not been done. Raleigh's 'Prerogative of Parliaments,' conceived in the form of a dialogue between a councillor of state and a justice of the peace, has also been quoted by Mr. Hume, who has singled out the passage which appeared to him to imply absolute power in the prince; but, though the work was dedicated to King James, and contains some strokes of flattery, that were to have been expected from a prisoner under sentence of death, who anxiously desired his life and liberty, as well as from one who had, in the preceding reign, been a thorough courtier, and had shared some of the smiles of his mistress at the expense of the people (he had some monopolies),* the whole tendency of the work is not only to dissuade the prince from raising money or making laws, but from projecting peace or war, or even appointing his ministers, judges, and other functionaries, without the interposition of the legislature. Upon such conditions, it might justly gall the pride—though it savours much of the ordinary language, which makes parliament, people, everything, the king's—but must be innocuous to the privileges of parliament to say, that the prince exercises absolute power through his grand council; and the following language, which the historian has quoted, ceases to have weight:—
'*Councillor*—That which is done by the king, with the

* Mr. Hume, in Note Q, says that 'Raleigh was thought to lean towards the Puritan party;' and as they pitied his misfortunes, and complained of his treatment, it was natural for him to wish their support; his great enemy, Essex, had courted both Papists and Puritans at the same time (Camden in *Ken.* p. 630); but so far was he from supporting them in his writings, that a

passage is quoted by Sanderson from his *History of the World* (p. 249), which is not only strong in favour of ceremonies, but is alleged by Sanderson to be prophetic of the evils which afterwards arose from the Puritan party (Sanderson's *James I.*, p. 311). We learn from Mr. Hume himself that Raleigh tried to save his life by feigned madness, &c.

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advice of his private or privy council, is done by the king's absolute power.' 'Justice—And by whose power is it done in parliament but by the king's absolute power? Mistake it not, my lord : the three estates do but advise, as the privy council doth ; which advice, if the king embrace it, becomes the king's own act in the one, and the king's law in the other ; for without the king's acceptance both the public and private advices be but as empty eggshells.'* In another place, however, the justice is made to use different language. 'Except,' says he, 'England were as Naples is, and kept by garrisons of another nation, it is impossible for a king of England to greaten and enrich himself by any way so assuredly as by the love of his people.' 'Councillor—Why should not our kings raise money, as the kings of France do, by their letters and edicts only? for, since the time of Louis XI., of whom it is said that he freed the French kings of their wardship, the French kings have seldom assembled the estates for any contribution.' 'Justice—I will tell you why. The strength of England doth consist of the people and yeomanry ; the peasants of France have no courage nor arms. In France, every village and borough hath a castle, which the French call *chateau villain* ; every good city hath a good citadell ; the king hath the regiments of his guards, and his men at arms always in pay ;—yea, the nobility of France, in which the strength of France consists, do always assist the king in his levies, because themselves being free, they made the same levies upon their tenants. But, my lord, if you mark it, France was never free in effect from civil wars, and lately it was endangered either to be conquered by the Spaniard, or to be cantonised by the rebellious French themselves, since that freedom of wardship.'† In another place, where he speaks of the former power of the peerage in regard to the Crown, in comparison with their present, he says :

* Pp. 107, 108. This is the language of the constitution, as we have already repeatedly said.

† Pp. 12, 13.

'The force, therefore, by which our kings, in former times, were troubled, is vanished away; but the necessities remain. The people, therefore, in these later ages, are no less to be pleased than the peers; for, as the latter are become less, so, by reason of the training through England, the Commons have all the weapons in their hand.'*

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These passages are sufficient for our purpose, and we shall not encumber our pages with further quotation on the subject, but content ourselves with observing—First, that Raleigh took a just view of the political situation of the country, while the monarch and his descendants acted under infatuation in attempting to govern upon the principles of the French monarch, when they neither had the army to second their will, nor such a state of society as prevented the great body of the people from acquiring influence, and made it the interest of the nobility, in whom any political power was lodged, to support the measures of the Court against the rest of the community—a fact which appears still stronger when we consider the frequent resistance to the French system, though it possessed all these advantages. Secondly, that the very circumstance of this family having attempted to fashion

* P. 51. The same idea is inculcated in the two next pages. 'I have ever,' says the justice, 'to deal plainly and freely with your lordship, more feared at home popular violence than all the foreign that can be made.' 'The power of the nobility being now withered, and the power of the people in the flower, the care to content them would not be neglected; the way to win them often practised, or at least to defend them from oppression. The motive of all dangers that ever this monarchy hath undergone should be carefully heeded, for this maxim hath no postern, *Potestas humana radicata in voluntatibus hominum.*' Mr. Hume mentions that this work was not published till after the author's death; but we must not thence infer that his style was not so guarded as

if it had been published by himself, for it is dedicated to James, and the address is most fulsome. The work is, in many respects, not unworthy of its author; and the effect of his system would have been to give much nominal, no real power to the Crown. The whole argument, too, proceeds upon the assumption that a more arbitrary government than had ever been in England was now attempted (see p. 110 about illegal imprisonments, which appear to have been numerous). Had Mr. Hume attentively perused Raleigh's performance, he would have discovered his mistake about benevolences (see p. 95 *et seq.*); and likewise in regard to new-year's gifts, which appear to have been liberally bestowed upon courtiers (p. 71).

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their government by that of France, instead of confining it within the limits of an ancient practice, not to say constitution, is of itself conclusive against the defence which has been made for them—that they acted upon the principles recognised at their accession.

CHAPTER IV.

PRESENTING A PICTURE OF THE STATE OF SCOTLAND, TOGETHER
WITH AN ACCOUNT OF THE GOVERNMENT OF THAT COUNTRY.

BEFORE the union of the Crowns by the accession of James VI. to the English throne, great part of Scotland was removed from barbarism, and it resisted improvement till a late period. Even in the most civilised districts of the low country, society, in the most important respects, appears not to have attained that degree of refinement which it had reached in England, about two centuries before.* Towns had risen to little comparative importance; manufactures, by which alone the great body of the people, where the territory is appropriated by a few, can be emancipated from dependence on the products of the soil, were in a state of infancy; and commerce was confined to the importation of a few articles in exchange for staples chiefly, though some coarse manufactures were also exported.† Large estates resembled English principalities, the lords of which, while they ruled with impunity on the inferior classes, frequently paid no law to the sovereign.‡ Their feuds were inveterate,

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The condition of the third estate compared with that of England, till the reign of James, affords strong proof of this (see this sub-discussed afterwards). Yet, considering the misery England had fallen through in changing from a state of society to another, we scarcely congratulate her on her improvement in some of the preceding signs.

Moryson's *Travels*, p. iii. b. iii.
; Spottiswoode's *Hist.* p. 490.
Buchanan's *Hist.*, and the first

part of the first vol. of Calderwood's manuscript *Hist.* in the Adv. Library, present a lamentable picture of society. Spottiswoode's *Hist.* is a valuable performance for the light it throws on this subject. The little respect paid to royalty is conspicuous in every page of Scottish history. Few of their kings died a fair death; and it seems to have been a matter of great importance to get a prince into their custody. Thus, in 1526, Sir Walt. Scott of Balclugh, or Buccleugh, was anxious to take James V.

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and conducted like wars betwixt foreign states. Murders, burnings, plunderings, and devastations disgraced the community, and the aristocracy endeavoured, by formal leagues or associations amongst themselves, to obtain that security—against powerful neighbours often, again, banded for their destruction—which the laws could not afford.*

from the Earl of Angus, and the young king inclined to a change of masters; but the earl's brother, having in vain attempted to prevail with him 'by alluring words' to hasten his pace, resorted to a more convincing argument:—'Rather,' says he, 'as the enemies take you from us, we must keep one-half of your body with us' (Calderwood's *MS. Hist.* vol. i. p. 36). The Earl of Arran wished to get possession of the young queen's person, in 1543, 'deeming by that means that he should have upon his side, not only the shadow of her name, but also might dispose of her marriage as he thought good, and either feed the English king with promises, or draw him to his partie' (*Id.* p. 167). The repeated attempts to seize King James VI.'s person by Bothwell—not Mary's paramour—are well known; likewise the raid of Ruthven, Gowrie's conspiracy. A lively picture of the tyranny of the aristocracy, and the consequent misery of the people, may be seen in the *Bas. Dor.* p. 160.

* As a proof of the state of the country, we may refer particularly to the following authorities:—Spotiswoode, pp. 61, 62, 70, 186, 187. The country was in 1571 convulsed with civil war, and to such a height did faction run, that fathers are represented as having been opposed to their own sons. Even children that could scarcely speak had their plays founded on such distinctions (pp. 253-273, 306). In 1583, the church represented to the king that there was a universal murmur, that no man could be assured of his lands, nor even life, the laws of the country being wholly perverted; and they

regretted the division of the nobles, one party seeking the overthrow and ruin of the other (p. 327). Pp. 347, 382, 384, 386-388, 390, 400, 401, 407-400, 411, blood and slaughter were common, and it was impossible to bring the guilty to punishment. P. 443, James boasted of having drawn Scotland out of infinite troubles, factions, and barbarities. P. 488, he recommends to the council (an. 1603) to remove barbarous feuds, and prohibits the custom of entering into associations for mutual security, and as presumptuous in subjects, who should depend on the laws (pp. 490-496, 504, 510, 528). Calderwood's *MS. Hist.* vol. i. first part of it, he says that in 1514 the country was greatly disquieted with robbery, slaughter, and oppression. The country was rent with faction; bands and confederacies were common, and it was not accounted the greatest evil that M^r Robert Stroven overran Athole and the adjacent counties with 800 thieves, and sometimes more (p. 4 *et seq.*). See p. 44 *et seq.* for the subsequent state of the kingdom; see also his printed *Hist.* pp. 129-132). Pp. 142, 149, Mr. R. Bruce admonishes the king to execute justice upon malefactors, *at the hazard of his life*. For that the Lord would assist him, if he prayed to Him for resolution; but that if he did not act so, 'he would not be allowed to enjoy his crown alone, but every man would have one' (p. 265). Bothwell's attempt upon Falkland Palace, accompanied by borderers (271). The raid of Leith, and other matters (298, 306). In p. 319, a most horrible picture is presented (Johnston, pp. 55, 73).

During the Papal supremacy, the church, it is alleged, though perhaps with some exaggeration, enjoyed nearly half the territory of the kingdom, independently of her immense revenue from tithes, and was, of course, great and powerful. With that disposition which all bodies of men never fail to possess, and which, with little truth, has been imputed in a greater degree to the clergy than to other incorporations, the church was ambitious for pre-eminence, and naturally embraced overtures from the Throne for repressing the exorbitant power of the aristocracy, hurtful alike to the pretensions of both.* From their habits, less powerful in arms than their territory would otherwise have promised, the clergy yet far outstripped the nobility in knowledge and industry; their number and influence in parliament were great; and as they generally filled the high offices of state,† for which their superior mental attainments qualified them, they could give such a strong direction to the current of affairs as to render them potent allies to the Throne. The arrogant pretensions and wealth of the Scotch church under the Papal system have been a fruitful theme of declamation; but it would argue little knowledge of human affairs not to admit that, in former times, her power was salutary. Land, in her possession, could not be more injurious to the general interest than in the hands of our aristocracy; on the contrary, there is every reason to believe that her vassals were far more independent than those of the nobility, an incorporation being ever the best landlord; and it was their interest, equally with that of the Crown, to counterpoise the strength of the nobility by supporting

* See Stuart's *View of the Reformation*.

† Calderwood, in his *MS. History*, vol. i. p. 1 *et seq.* says that the prelates were introduced into all civil offices of importance, after the battle of Flowdon Field, because there did not remain a sufficient number of the nobility qualified to fill them (see

Sir Ralph Saddler's *Letters and Negotiations*, p. 61). Sir Ralph, by order of his master, Henry VIII., advised James V. to seize upon the religious houses to increase his revenue, but James would not listen to the sacrilegious proposal (p. 37 *et seq.*).

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the privileges of the lower orders. But her attachment to the Throne, in opposition to the aristocracy, provoked their hatred, as her wealth excited their cupidity, and these passions burst into action the instant the Reformation promised to gratify them.

Anno 1400,
according
to Spottis-
woode.

The opinions of Wickliffe had, in the beginning of the fifteenth century, penetrated into Scotland;* but the soil was not yet ripe for their reception. When the Reformation had begun to convulse the rest of Europe, it reached that country, though somewhat later than it had done the sister kingdom; and, as usual, the attempts to arrest its progress by persecution gave it additional vigour.† Such a grand movement of the human mind could not want a leader, and in Knox it found an able and a zealous one. Not to him, however, but to the natural course of events, is its peculiar direction in Scotland to be ascribed. In England, the sovereign, placing himself at the head of the Reformation, was enabled, from the peculiarity of his situation, to preserve episcopacy against the wishes of the people. In the other country, the power of the sovereign was too limited to stem the torrent, and as she vainly endeavoured to withstand the innovation altogether, it necessarily took that direction which the influence of the prince had prevented on the southern side of the Tweed. Nor is its course less to be attributed to the selfishness of the aristocracy, and even of part of the Protestant ministry, than to the piety of the people and the rest of their pastors. The plunder of the English church had whetted the cupidity of the Scottish aristocracy, who were sufficiently predisposed against the clergy, and who descried,

* See Knox's *History of the Reformation*, p. 1 *et seq.*; Spottiswoode, p. 58; Calderwood, MS. in Advocates' Library, Introd. p. 98; printed *Hist.* p. 1.

† Spottiswoode, pp. 62-65; Calderwood's MS. *Hist.* pp. 58, 59; Stuart's *Hist. of the Reformation*. Yet in 1560, when the Reformation had gained considerable ground, the

Popish prelates were silent in parliament while the Catholic doctrine was assailed; upon which the earl marshal observed, that he had been formerly jealous of the Romish religion, but was now confirmed in the truth of the new doctrine, since the Catholic bishops could say nothing in favour of the pope (Spottiswoode, p. 150).

downfall of bishoprics, abbeys, &c., great accession of property and wealth to themselves.* The Protestant had avowedly, at the same time, expected the proper patrimony, as it was called, of the *kirk*, as the fulfilment of their piety.† The former succeeded in their

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may be fairly inferred from the fact; and they are charged with preferring the Presbyterian establishment from the hope of promotion (Johnston, *Hist. Rer. Brit.* 1655; Spott. p. 86).

The most common complaint of the sessions of churchmen, and a station to attend the borders of the north against England afforded pretext, some of them entered the regent's chamber, and one of them, of Gaitgirth, said, "We are told, that this is the device of the bishops, who stand by you. We will to God it shall not go so; we will see us and our poor tenants from their idle bellies, they are our preachers, and seek to ruin us all. We shall suffer it for us." *With that, every man took his weapon* (pp. 94, 95). Followed? "To our great credit the reformed clergy, 'we see that some gentlemen are now busy in exacting tythes and duties paid before to the thanes ever the Papists were, the tyranny of priests is added to the tyranny of lords and prelates' (p. 164). The aristocracy almost the whole patrimony of the kirk into their own hands, and afterwards supported episcopacy on the same motives as they desired its overthrow—to get possession of the church's revenue and dress to the Reader, by the Rev. Calderwood's *Hist.*). That is then much genuine piety and land, everyone acquainted with the history must admit; yet the aristocracy seem to have been guided by interest, and were cruel and cruel in their conduct and one might have almost said, as the unfortunate Earl of Tyrone, who talked

of his conscience and religion:—*'You mention religion! You have no more religion than my horse'* (Moryson). Huntly, for instance, had proclaimed himself a Protestant, and yet, to win favour with Queen Mary, he turned Papist again (Spottiswoode, p. 175; see p. 187). Profane swearing and the use of God's name were common (Calderwood, p. 318).

† Johnston says, that when the parity of pastors, according to the platform of Geneva, was once broached, there were two sects of men eager for it—laics, who supposed this the direct way to obtain spiritualities into their own disposal; and the clergy, who expected to raise themselves into greater honour (*Hist. Rer. Brit.* p. 16; Spottiswoode, pp. 159, 160, 164, particularly the last; 187, 199, 209, 210). The clergy maintained 'that the patrimony of the church consisted of lands, buildings, possessions, annual rents, besides tythes, mansees, glebes, and the like, together with all that ever has been given to the church, or that may in future' (Spottiswoode, p. 207). 'To take any part of this patrimony by unlawful means,' say they in their form of church policy presented to parliament (an. 1578), 'and convert to the particular and profane use of any person, we hold a detestable sacrilege before God' (p. 297). Calderwood informs us—and he is the most unexceptionable authority, as being of the party obnoxious to the court—that the ministry acquiesced in certain regulations for their stipends, till the church came into full possession of her own patrimony, the tithes (p. 43). Spottiswoode is condemned for his severe censure of the Presbyterian party, after their

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hopes;* the latter in vain, by the loudest and frequently reiterated complaints of sacrilege, tried to rouse in favour of the church, the in this respect languid religious feelings of men of influence and property.†

The 'First Book of Discipline,' containing the principles of the reformed religion, was subscribed by many of the nobility and barons; but on the express condition that the bishops, abbots, priors, and other prelates, should continue to enjoy their livings. The consequences might easily have been anticipated. The Popish church had devised many checks to prevent dilapidations of her property by beneficed men; but these operated no longer, and the prelates naturally embraced the opportunity of enriching their relations by feus and tacks or leases, equally of lands and tithes, at nominal or quit-rents. It is probable, too, that many might forsake the celibacy to which they had been bound, and use the advantage of their situation to provide for their families. It appears, likewise, that many grants were made by beneficed men to the very individuals who subscribed the 'Book of Discipline,' in order to purchase security by their protection to the remainder of the livings.‡ When Mary ascended

disgraceful schism in the presbytery of St. Andrew's. 'On this occasion,' says he, 'men noted that of all men none could worse endure parity, and loved more to command, than they who had introduced it into the church' (p. 387).

* Were we to quote authorities for this, our pages would be crowded, and we shall have occasion to quote authorities in support of the statement afterwards. But to show how early avarice had been successful, we may observe that in 1560 the clergy petitioned the parliament on sundry points, one of which was, 'That the Pope of Rome's usurped authority should be discharged, and the patrimony of the church employed for the sustentation of the ministry, the provision of schools, and entertainment of the poor, of a

long time neglected.' This last clause was not very pleasing to divers of the nobility, who, though they liked very well to have the pope's authority and doctrine condemned, had no will to quit the church's patrimony, wherewith, in that stirring time, they had possessed themselves (Spottiswoode, p. 150; see pp. 160, 164, 175, and so forth). Calderwood is equally explicit on this head.

† Spottiswoode, pp. 164, 209; see quotations above, from pp. 297, 298, 301, 302, 385, 386. Every assembly was employed about the preservation of the patrimony. Knox maintained that tythes were of divine institution (Spottiswoode, p. 86). Calderwood's *History* is full of regulations and complaints about the patrimony.

‡ Spot. p. 175. In 1560, the *Book of Discipline* was subscribed

the throne, as the church livings could not be conferred upon Popish clergy, she bestowed them on the laic minions of the court. 'The patrimony of the kirk,' says Knox, 'bishopricks, abbeys, and such other benefices, were disposed by the quene to courtiers, dancers, and flatterers. The Erle Bothwell, quhom the quene preferred above all uthers, efter the decease of David Rizio, had, for his part, Melrose, Hadington, and New Battel.'* As such individuals could have no interest in maintaining the property of the church, and were shackled by impotent restraints, they naturally improved their time by securing as much of it as possible. With regard to monasteries, they were destroyed, and the abbots and priors became temporal lords, voting in the name of the church. Under the subsequent regencies, it was resolved to preserve the estate of bishops during the king's minority, because it afforded a source of influence and even of

by a great part of the nobility and barons, under the condition of the bishops, abbots, priors, and other prelates being permitted to enjoy their livings (Calder. p. 30). As for their motives, see Introduction to Calderwood, by the editor, who tells us that James's design of restoring episcopacy was seconded 'by some nobles and great men of the kingdom, who were greedily gaping and grasping at the revenues of the church, which they could not so easily come by unless there were some particular, and, as they were then called, Tulchan bishops kept in the church, who being, to some satisfaction of their lustful avarice and pride, gratified with the title, and a little addition to their former maintenance, might the more easily let down the milk, and make a sure conveyance of the far greater part of the benefices to the sucking lords.' But before the great dilapidation of the church's patrimony, this principle operated far more strongly. Mr. P. Adamson, who was disappointed in not getting the bishopric of St.

Andrew's, in his sermon divided bishops into three sorts—'My lord bishop, my lord's bishop, and the Lord's bishop. My lord bishop was in time of papistry; my lord's bishop is now, when my lord getteth the fat of the benefice, and the bishop serveth for a portion out of the benefice, to make my lord's right sure; the Lord's bishop is the true member of the gospel' (Calderwood, p. 55; see pp. 47, 51, 56, 57, 64, 124, 135, 138, 142). One of the severest charges against the bishops in 1583 was, that some of them were sacrilegious dilapidators of their whole benefices (pp. 157, 300). We learn from p. 310 that there was sacrilege in all estates, without making any conscience (pp. 321, 322, 328; Spottiswoode, pp. 164, 175, 183, 209, 210, 298, 301, 302, 311, 327, 387).

* Knox's Works, printed for the Bannatyne Club, vol. ii. p. 528, the part here referred to being his *History of the Reformation*. This would appear to have been an early practice—long before the Reformation (Spottiswoode, p. 60).

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revenue to the regent, by whom the most simoniacal pactions for livings were made.* After the majority of James, the annexation by parliament of church lands to the Crown, under the pretext of increasing its revenue, and the after-transference of part of it to favourites, together with the confirmation of the previous grants, whether of land or tithes, to the possessors, for ever bereaved the church of the best part of her patrimony.† To the alienations of tithes, the practice, under the Romish religion, pursued by patrons, of annexing or impropriating churches, with their tithes, to particular bishoprics, abbeys, &c., by which a vicar was supplied, had greatly contributed.‡ It being as impossible for a bishop or abbot to draw the tithes of several parishes so as to farm the territory, leases of them became absolutely necessary; but, under the old system, the consent of the chapter was requisite for the bishop, that of the abbey for the abbot, and these checks were strengthened by the corrective power of his holiness, who had too deep an interest in the general welfare of the church to permit alienations of her property.§ The Reformation removed these shackles, and

* Calderwood, pp. 48, 56, 64. Morton, regent, attempted to win Andrew Melville to episcopacy, in order to effectuate a conformity with England, as he despaired to govern according to his wish without it. 'If he found ministers apt, he purposed to advance them to bishoprics' (p. 66). As to the abbots, priors, &c. turning temporal lords, see Spottiswoode, p. 365; Calderwood, p. 102. The monasteries were disgracefully plundered. Calderwood is anxious to establish that it was only the 'rascal multitude' that committed the robbery; but who set them on? He has preserved a letter which was penned and divulged a little before, in the name of the lame, the blind, &c., somewhat like the petition of the beggars to Henry VIII. (*Som. Tracts*, Scott's ed. vol. i. pp. 103, 104), which was evidently

calculated to stir up the people (Calder. *MS.* vol. ii. p. 497; see an account of the destruction in p. 516). Knox himself is said to have observed (Spott. p. 170), that the sure way to destroy the rooks was to pull down their nests; and the observation was sound. But the plunder of the monasteries, though so much censured, was the most excusable of all the plunders then committed.

† See Spottiswoode, pp. 385, 385-387.

‡ See Blackstone's *Commentaries*. There had apparently been a vast number of annexations in Scotland.

§ In a work entitled *The Assurance of Abbey and other Church Lands in England to the Possessor, cleared from the Doubts and Arguments about the Danger of Resumption, &c.*, it is maintained that by the canons of the church it was not necessary; but it

Protestant clergy daily saw their prospects vanish. Hope remained. They loudly demanded restitution and repeal of the act of annexation—declaring, with truth, that unjust possession was no possession before God, and labouring to impress a conviction of the sacrilege which had been committed. Nor did they neglect any means within their power calculated to stop the further progress of the evil or to regain lost rights; and they made a special proviso in favour of those whose charity and piety should lead them to bestow gifts upon the church.* This conduct was perfectly natural, and, therefore, pardonable; but it ought to illustrate the tone of that class of people who impute extraordinary disinterestedness to the primitive reformers, from the smallness of their stipends, and profligacy to the Romish clergy from the extent of their possessions. If the livings of the Protestant clergy were small, they struggled to make them very large. If the church had been ambitious in acquiring, the other would be less so in its desire of retaining, and even of recovering, that immense property. But it may fairly be questioned whether, considering the state of the country at that time, the stipends of the Protestant clergy, small as they were, ought not to be deemed an adequate com-

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even from that production, the pope was in the practice of giving, and that there were gains against alienations (pp. 17, 18). In 1578, the church represented, seeing they 'who were called the chapters and convents, abbeys, cathedral churches, like places, serve for nothing but to set fees and leases of any be left), and tythes, to and prejudice thereof, as experience teacheth, the same be abolished' (Spottiswoode,

assembly enacted, that all who dilapidated their benefices should be excommunicated

(Calderwood, p. 91). In the passages already referred to, the fullest confirmation of our text will be found. The church represented strongly that her patrimony should be restored; and, say the clergy—'If any shall think this prejudicial to those that possess the tythes by virtue of leases, we would have them consider that unjust possession is no possession before God; and that those of whom they acquired the right were thieves and murderers, and had no power to alienate the patrimony and common good of the church' (Spottiswoode, pp. 104, 105; see also other passages already referred to).

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compensation to candidates for church preferment. The sums allotted to the majority of pastors appear insignificant now; but, as the scarcity of money was then extreme, the habits of life totally different from what we are accustomed to, the openings for active talent without capital in other departments so very limited that the most aspiring genius saw itself doomed to poverty and neglect, an income, trifling in our time, conferred comparative riches. If, with this, we consider the respect then paid to the clergy, and the power which belonged to their body, we may affirm that, as they were generally not of high origin, they derived an infinitely more exalted station in society by the church than they could possibly have reached by any other profession.

The Presbyterian church is founded upon parity in the pastors; yet, at first, the paucity of fit ministers of religion rendered it necessary to admit some superiors, under the name of superintendents, for the purpose of visiting, planting, and reforming kirks, which afforded afterwards an argument to the court party, that episcopacy was by this means preserved in substance, and parity amongst ministers, of consequence, not originally intended. Though, however, some features in the office of superintendent bore a striking analogy to that of bishop,* there seems to have been an essential difference in the constitution of the offices. But it is well remarked by Calderwood, that 'in process of time the like inconveniences would have followed upon the office of superintendents as was like to follow upon the office of bishops.† Hence it is probable that to the ambition and dexterous talent of a few individuals may be traced an analogy between the offices, which, speciously veiled at the time, would, at a future

* See Spottiswoode, p. 159; particularly p. 258.

† See Calderwood as to the office, pp. 26-7, 32 (see p. 45 regarding commissioners for visiting kirks, which throws light upon this sub-

ject). New ones were to be chosen by every assembly (see M'Crie's *Life of Knox*, vol. i. p. 386 *et seq.*; vol. ii. p. 283 *et seq.*). The words quoted in the text in p. 69.

have had a mighty influence on the establish-

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government of the church by presbyteries, synods, and assemblies, was finally established by the legislature year 1592 ; * and though vacant bishopricks continued to be supplied, the incumbents were not permitted to exercise superiority over other pastors. † Even this, however, gave offence to the rest of the clergy who laboured for the abolishment, and James himself affected to be a Presbyterian. In 1590, addressing the General Assembly, 'he praised God that he was born in such a time in a time of the light of the gospel ; to such a time as to be king of such a kirk—the sincerest kirk in the world : the kirk of Geneva keepeth Pasch and what have they for them ? They have no institutions for our neighbour kirk in England, their service is still said masse in English ; they want nothing of the rest but the liftings. I charge you, my good people—

5th parliament of Jas. VI. Calderwood, p. 268). But there are several kinds of assemblies from the commencement of the Reformation (Calderwood, pp. 29, 30, &c.). Calderwood, p. 56, tells us that the first bishop after the Reformation was James Beza, nominated by the General Assembly, to the see of St. Andrews, for that the old bishops were not permitted to exercise their office. 'It was easy,' says he, 'to get the consent of many to this sort of episcopacy, as the poor, some being covetous of the office, some not taking up with the corruption of the office, and some having a carnal respect to some of their friends (*Ib.*). But the small profit from his office : Morton and his friends got great part of his rent in salaries, and pensions.' The minister likewise of a feeble frame, but much abler in his tongue, than respect had the court to the person, so that

commodity could be reaped by virtue of his title' (p. 57). The author represents Knox as hostile to the measure, and it would appear that he was so ; yet Spottiswoode imputes the doctrine of parity in the church to Andrew Melville (p. 275). In 1586, it was agreed upon that the election of bishops should be by presentation, directed to the General Assembly (Calderwood, p. 197). The General Assembly agree this year that it is lawful to admit a *pastor*, minister, or bishop, having a benefice, who has been presented by the king to the same (Calderwood, p. 207 ; see Spottiswoode, pp. 275-6). In 1580, the General Assembly, held at Dundee, 'conclude that the office of a bishop, as then used, had neither foundation nor warrant in the word of God, and that all called, or who should be called to that office, should demit till re-admitted into the church by the assembly' (Spottiswoode, pp. 311, 468 ; Calderwood, to the same effect, pp. 66, 85, 90-1).

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ministers, doctors, elders, nobles, gentlemen, and barons —to stand to your purity, and to exhort the people to do the same, and I forsooth, so long as I brook my life and crown, shall maintain the same against all deadly.* Yet, such was the insincerity of this monarch, there is reason to believe that he had even then determined on the subverting of this purest of all institutions, which he charged the people, and so solemnly pledged himself to maintain; for, in his work entitled '*Basilicon Doron*,' printed and *clandestinely circulated* a few years afterwards, and which must have cost time in the composition, he contends that 'parity amongst ministers cannot agree with monarchy; that without bishops the three estates cannot be established; that ministers sought to establish a democracy in the land, and to bear the sway of all the government; that by time they hope, by the example of the ecclesiastical policy, to draw the civil to the same parity; that no man is to be more hated of a king than a proud Puritan; and that the chief of them are not to be allowed to brook the land.'†

His opinion of the ambitious views of the clergy was not destitute of truth. Popular government and extraordinary times call forth talent, and, notwithstanding the ridicule which some ingenious authors have attempted to throw upon the Scotch clergy of this period, there are many traces of profound ability and extensive learning.‡ But, like all bodies of men, their ambition was fully commensurate; and their influence with the people promised success to their schemes. Their language and proceedings plainly indicated a claim to papal power, as well as infallibility, by means of their assemblies; § they arro-

Calderwood, p. 256.

Calderwood, p. 357, assures us the king had early formed the resolution of restoring episcopacy.

† I have quoted this from Calderwood, in order that the reader may be satisfied of the views of parties (p. 428). Seven copies only of the *Bas. Dor.* were printed on the first

edition (M'Crie's *Life of Melville*, vol. ii. note 1).

‡ Whoever will take the trouble to read the church histories of the time must be satisfied of this.

§ In the second declination of Black, of the king and council, at least *primâ instantiâ*, it is said, that God has given the keys of the king-

l the right of discussing affairs in the pulpit, and of
gning all men, from the cottage to the throne, upon

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f heaven to the church, and
is clergy were empowered 'to
ish, rebuke, convince, exhort,
reaten to deliver unto Satan,
k out and debar from the
m of heaven' (Calderwood,
). In February 1597, certain
ns were proposed by the king

Convention of Estates and
al Assembly, held at Perth,
which we shall select a few,
the answers of the clergy:
/ho should establish acts for
ternal government of the kirk?

'The pastors and doctors, ac-
g to the word of God, and
and prinees ought, by their
ity, to ratify and approve that
ir laws, and vindicate by their
inction, which *they declare* to
d's will out of His word.'
had formerly contended that
ght of electing pastors should
ted in the congregation; but
rection as to where it should

they now reply, that 'election
ors should be made *by pastors*
ctors lawfully called, and who
r the gifts; and to such as are
sen, the flock and patron *should*
their consent' (Calderwood, p.

To the query, another answer,
different person of the com-
appointed for the purpose by
sembly, was given, and which
thor calls judicious. 'The
tation of the patron is merely
an institution, and importeth
essity of consent, but the con-
f the flock is necessary' (p.

To a query regarding the
n of the session, it was an-
l, that 'the ministers *direct*
oderate the election by the
and the congregation *obeyeth*
veteth consent' (p. 384). They
se assert, that the assembly
e convened by the office-
s of kirk, *because they derive*
ight from God only' (p. 385).

'May anything be acted in
sembly to which his majesty

consenteth not?'—A. '*The king should*
consent to, and by laws approve all
that by the word of God is concluded
in the assemblies; and the acts
thereof have sufficient authority
from Christ, who has promised that
whatsoever two or three convened
in His name shall agree upon on
earth, shall be ratified in the hea-
vens; the like whereof no king nor
prince hath, and so the acts and
constitutions of the kirk are of
greater authority than any king
earthly can give; yea, even such as
should command and overrule kings,
whose greatest honour is to be mem-
bers, nursing fathers and servants to
this king, Christ Jesus, and his house
and queen, the kirk' (p. 386; J.
Melville's *Memoirs*, MS. p. 293 *et*
seq.). Did ever papal arrogance ex-
ceed this? Yet, when a question
was put, whether the voice of the
majority should be decisive of a
question, the clergy, who appre-
hended that a majority might be
gained over by the court, evaded the
question, and charged the king with
a wish to sow dissension. The fol-
lowing passage, from Calderwood,
will afford a juster picture of the
temper and aim of parties than any
representation of ours:—'At a con-
ference between the king and some
ministers in 1506, Mr. James Mel-
ville, their mouth, showed that the
commissioners appointed by the
General Assembly to watch in so
dangerous a time, had convened with
certain of the brethren at Cupar.
The king interrupted him, and chal-
lenged the meeting as seditious, and
without warrant, and said they made
themselves and their country con-
ceive fear, when there was none.
Mr. James began to reply, after his
mild manner, but Mr. Andrew taketh
the speech from him, and howbeit
the king was in anger, yet he uttered
their commission *as from the mighty*
God. Calling the king God's silly
vassal, and taking him by the sleeve,

CHAP. even bruits or rumours, and uncertain informations; *
 IV. and the jurisdiction claimed for the church was sepa-

said this in effect: "Sir, we will humbly reverence your majesty always, namely, in public; but we have this occasion to be with your majesty in private, and you are brought in extreme danger, both of your life and of your crown, and with you the country and kirk of God is like to be wracked for not telling you truth, and giving you a faithful counsel. We must discharge our duty, or else be enemies to Christ and you. Therefore, sir, *as diverse times before, so now I must tell you, that there are two kings and two kingdoms. There is Christ and His kingdom, the kirk, whose subject King James VI. is, and of whose kingdom he is not a king, nor a head, nor a lord, but a member; and they whom Christ hath called, and commanded to watch over His kirk, and govern His spiritual kingdom, have sufficient authority and power from Him to do so, which no Christian king should control nor discharge, but fortify and assist, otherwise they are not faithful subjects to Christ. Sir, when you were in swaddling clouts, Christ reigned freely in this land in spite of all His enemies. His officers and ministers convened and assembled for ruling of His kirk, which was ever for your welfare also, when the same enemies were seeking your destruction; and have been, by their assemblies and meetings since, terrible to these enemies, and most steedable to you. Will ye now, when there is more than necessity, challenge Christ's servants, your best and most faithful subjects, for their convening, and for the care they have of their duty to Christ and you, when as you should rather commend and countenance them as the godly kings and emperors did? The wisdom of your council, which is devilish and pernicious, is this, that you may be served with all sort of men to come to your purpose and grandeur*—Jew and Gentile, Papist and Pro-

testant. Because the ministers and Protestants in Scotland are too strong, and control the king, they must be weakened and brought low by stirring up a party against them, and the king being equal and indifferent, both shall be fain to flee to him; so shall he be well settled. But, sir, let God's wisdom be the only true wisdom; this will prove mere and mad folly," &c. (pp. 329, 330). I have taken this from Calderwood, instead of transcribing from James Melville's *Memoirs* in MS. in the Advocates' Library, from which Calderwood himself transcribed it. But I have compared the two, and have found that they agree in everything material (see MS. pp. 140, 276 *et seq.*). Calderwood was one of the keenest on the same side with the Melvilles, and their great admirer. He approves highly of Andrew Melville's conduct on the above occasion. By the way, one cannot help being amused with these affectedly moderate men's fondness for title. While they designate the greatest landed proprietors by their Christian names, John, Andrew, &c., they never, on any occasion whatever, omit the word Mr. before the name of one of the brethren.

* We learn from Spottiswoode (p. 343) that in 1586, one of the clergy, Gibson, called the king a persecutor, and denounced the curse that fell on Jeroboam, that he should die childless, and be the last of his race. The chancellor advised (p. 347) the king to allow the ministry to go on, for that they would soon become so intolerable that the people would drive them out of the country. The king replied, that if he wished the 'ruin of religion, he would adopt that plan; but he wished it well.' Yet James appears not to have been burthened with religion at any time, for besides being 'bloated with banning and swearing, the clergy agreed that he should be admonished

by no definite line from that of other courts, but, the pretext of censuring immorality, embraced t every offence against morals or society.* Nor

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ear hearing of speeches in sermon of them that desire nune with his majesty' (Cald, pp. 317, 318; see Calder-pp. 383, 384, concerning the the church to mention men's in the pulpit, even on bruits mours; see Spottiswoode, p. seq. about the discussion of in the pulpit; see J. Mel-Mem. or Diary, MS. p. 295). lderwood, p. 388, as to the , &c.; see pp. 336, 340, 347 Spottis. p. 419. clergy strenuously tried to their order from civil juris- for things uttered from the on civil affairs and characters; this was afterwards pointedly we shall prove it. Mr. D. was charged with having said ie pulpit that the popish lords urned from banishment with g's knowledge and upon his ice, and that he, the king, ereby 'detected the treachery eant;' 2. With having called ngs the *divell's bairns* (chil- adding, that 'the *divell* was court, and in the guiders of . With having used these in his prayer for the queen, ust pray for her for the fashion, have no cause; she will never good' (by the way, was this cerity which a pastor ought tain in addressing the Deity? hion!); 4. With having called een of England an atheist; h having discussed a sus- t granted by the lords of , and called them miscreants bers (from the corrupt state ice in Scotland at that time, ch there is ample proof, the vere not misapplied); 6. With called the nobility degene- odless, dissemblers, and ene- the church—and the council, glasses, cormorants, and men religion,' &c. (Spottiswoode,

pp. 423-4). The English ambassa- dors complained (p. 419). Mr. Black was summoned before the king and council; and here we may observe that the present case is altogether independent of any question about the powers of the council as a court of judicature, for Black's ground of declinature was its being a civil jurisdiction. The clergy, with Andrew Melville at their head, took the matter up as one of vital importance to the church, as tending to bring the doctrine of all ministers under the censure and controlment of his majesty and council; and it was resolved that he should decline the judicature, 'and that all the brethren be exhorted to seek out all the warrants of Scripture or positive laws to prove that the judgment of the doctrine whatsoever pertaineth to the pastors of the kirk, in *prima instantia*' (p. 335). Others had declined civil jurisdiction before, but Black was advised to give in his declinature with his reasons in writing, that it might serve as a precedent against similar attempts by the court (p. 336). This was accordingly done; and Black, after stating generally, that in all civil matters he subjected himself to the civil powers, says, 'Yet seeing I am at this time brought to stand before his majesty and council, as a judge set to cognosce and decern (try and decree, or ad-judge), upon my doctrine, where through my answering to the said pretended accusation might import, with the manifest prejudice of the liberties of the kirk, an acknowledg-ment of your majesty's jurisdiction in matters that are mere spiritual which might move your majesty to attempt farther in the spiritual government of the house of God, to the provocation of His hot displeasure against your majesty, and, in the end, either a plain subverting of the spiritual judicature, or at least a

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 IV. despired. Excommunication by statute inferred civil

confounding thereof with the civil, if, at any time, profane and ambitious magistrates might, by such dangerous beginnings, find the hedge broken down to make a violent irruption upon the Lord's inheritance, which the Lord forbid. Therefore, I am constrained, in all humility and submission of mind, to use a declinature of this judgment, at least *in primâ instantiâ*.

'The Lord Jesus, the God of order and not of confusion, as appeareth evidently in all the kirks of the saints, of whom only I have the grace of my calling, as His ambassador, albeit most unworthy of that honour to bear His name among the saints, hath given me His word, and no law or tradition of man, as the only instructions whereby I should rule the whole actions of my calling in preaching of the word,' &c.; 'and in the discharge of this commission, I cannot fall in reverence of any civil law of men, but in so far as I shall be found to have passed the compass of my instructions, which cannot be judged according to the order established by that God of order, but by the prophets whose lips He hath appointed to be keepers of His heavenly wisdom, and to whom He hath subjected the spirits of the prophets. And now, seeing it is the preaching of the word whereupon I am accused, which is a principal point of my calling, of necessity the prophets must first declare whether I have kept the bounds of my directions, before I come to be judged of your majesty's laws for my offence.' He concludes, therefore, that his case must first be tried by the Ecclesiastical Court (Calderwood, p. 337 *et seq.*). To what this must have led is evident; yet it has been alleged that the declinature was only in the first instance, and that the civil jurisdiction remained entire. But I would ask any man to say whether the obvious meaning is not, that if he had been declared 'by the

prophets' not to have transgressed, the civil jurisdiction could not have interposed? And granting the reverse, to what would this have tended? Surely to a far greater confusion than the direct course of leaving civil matters to civil courts. Could a court pretending to divine power yield to a human? But the sequel puts the matter beyond all doubt. James would have given up the case if the clergy would have departed from their declinature; instead of accepting the terms, however, they gave an explanation, that they did not mean to exempt from civil jurisdiction any matter or cause civil and criminal, committed by whatsoever persons, and justly pertaining thereto, 'not contrary to the word of God, but only in matters and causes spiritual, of persons bearing a spiritual function in the kirk and spiritual kingdom of Jesus Christ, in discharging the points of their office and duty spiritual; as, namely, preaching of the word, &c., the laws and instructions whereof as they have received from Christ, only set down in the word, and from no king nor civil magistrate earthly, so ought they to be censured and judged by the same word allenarly (only), and such as have their lawful calling in the interpretation and opening up of the same' (pp. 340-1). As the case could not be quashed, Black gave in a second declinature, adhering to his former, and stating further, that there are two jurisdictions, one civil, the other spiritual, appointed by God, and which could not be altered by man; that God had effectually called His office-bearers and ministers, to whom He has concredited the preaching of the evangelists (1 Cor. ix.); 'whom He has placed in their spiritual ministry over kings and kingdoms, to plant, to pluck up by the roots, to edify and demolish (Jer. i.); to cast down strongholds, and whatsoever lifteth itself up against the

rebellion by outlawry; and with such keenness was the right of inflicting this punishment maintained, that the assembly declared that the king had as little power to relax a notoriously unjust sentence as to pronounce it.*

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knowledge of God (2 Cor. x.). Unto these He has given spiritual armour for that effect, and to take revenge of all stubborn disobedients (Ib.). Whom he has commanded not only to preach the word, and to be constant in season and out of season (2 Tim. iv.), but also to cut the word aright, giving the dutiful part and portion thereof to every degree and sort of men (Mat. xxiv.; 2 Tim. ii.). To admonish, rebuke, convince, exhort, and threaten (2 Tim. iv.). To deliver unto Satan (1 Cor. v.; 1 Tim. i.). To bind the impenitent in their sins; to lock out and debar from the kingdom of heaven (Mat. x.; John xx.). To whom He has given the keys of the kingdom of heaven (Mat. xvi.), and power to assemble themselves to this effect (Mat. xviii.; Acts xv.; 1 Cor. xiv.); promising His presence and assistance (Mat. xxviii.). And, to be short, the spiritual administration as He has put it in their hands, making them judges to try and cognosce in spiritual matters (1 Cor. xiv.); even so He chargeth them with vehement attestations by the great God and glorious coming of the Prince of Pastors (1 Pet. v.) to do these things without respect of persons, with all attention' (1 Tim. v. vi.; 1 Pet. v.; Tit. ii.).

'And therefore, in so far as I am one, howbeit most unworthy, of the spiritual office-bearers, and have discharged my spiritual calling, in some measure of grace and sincerity, *'should not, nor cannot, be lawfully judged in spiritual matters, for preaching and applying of the word of God, by any civil power, authority, or judge, I being an ambassador and messenger of the Lord Jesus (Malach. ii.), having my message and commission from the King of Kings, as said is, and all my instructions set down and limited in the book of God, that cannot be extended,*

abridged, or altered by any mortal wight, king or emperor (2 Tim. iii.; Deut. iv.; Prov. xxx.; Rev. xxiii.). And seeing I am sent to all sorts of men, to lay open their hid sins, to preach the law and repentance, the evangel and forgiveness of sins, and to be a savour of life unto life to those that are appointed for life, and a savour of death unto death to those that are appointed for death (2 Cor. ii.), my commission, the discharge and form of delivery thereof, *should not, nor cannot, be lawfully judged by them to whom I am sent, they being as both judge and party, sheep and not pastors: to be judged by this word, and not to be judges thereof*' (pp. 347-8). Did ever anything in any age or nation surpass this? With regard to their texts, I cannot help remarking that Shakspeare must have had a less ambitious set of men in his eye when he so happily said:

In religion
What damned error, but some sober brow
Will bless it and approve it with a text.

The excellence of the passage will form my excuse for quoting anything so hackneyed. James, too, could quote texts for his worst usurpations.

* Calderwood, p. 389. In how many forms have the pretensions of the church—and it is by no means singular—exhibited themselves (see *Telemaque*, liv. xxiii.)? To a question of Idomeneus about religion: 'Pourquoi, lui répondit Mentor, vous mêleriez-vous des choses sacrées? Laissez-en la décision aux Etruriens, qui ont la tradition des plus anciens oracles, et qui sont inspirés pour être les interprètes des Dieux,' &c. The sentiments are much the same as those of the Scotch clergy.

In Barrow's *Sermons*, 'Of Obedience to our Spiritual Guides,' we meet with similar pretensions. It is true that they are qualified in the last

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Such lofty pretensions were as irreconcilable with good government as with the *jus divinum* of kings ; but, as at that time, justice was 'lame as well as blind' in Scotland, and the bulk of the people laboured under the most galling oppression, a system founded upon popularity promised them relief. Yet it is not wonderful that the power of the church, clashing with that of the Throne, should have kindled a desire in the monarch to repress it ; and had James and his successors endeavoured merely to confine it within limits compatible with the constitutional form of the civil government, or, in other words, had they bereft it of all legislative and judicial authority, and made it, as now, virtually Erastian, or subordinate to the civil power, they would have merited praise rather than censure. From their violent and corrupt measures to overturn the Presbyterian establishment altogether, and impose episcopacy and ceremonies abhorrent to the people, and more pernicious to good civil polity, they and their advisers must be considered amenable for all the direful effects of such impolitic and tyrannical proceedings. It may appear inconceivable how the aristocracy should have beheld with indifference the encroachments of the church ; but it ought to be remembered that their own security to her patrimony, of which she had been plundered, rested strongly upon the continuance of the system, and that they were likewise, in some measure, overborne by the popular torrent. Had the clergy been installed in the old livings, they would have had a potent opposition to encounter ; and it is probable that the popular favour would have been lost by the habits which large incomes generally produce. Indeed, the Presbyterian system contained a principle of self-correc-

semon ; but the qualification is clearly meant to meet objections founded upon the assumed infallibility of the Romish church. Admit his principles in the first place, and the qualification is an insult to the understanding. The inimitable Field-

ing makes Pooth observe, that an angel might be said to have guided Barrow's pen in certain of his sermons ; but perhaps the reader may be of opinion that it was a fallen ore in the case of those referred to.

tion, which, had matters been left to their natural course, would in no long time have abridged the clerical authority. The religion so zealously introduced by the Stuarts was calculated to subdue the temper by its hold over the imagination; but the other, destitute of the requisite observances, and depending on popularity, appealed to the judgment and the heart; while the institution of lay elderships taught the people at large to exercise their own understandings on spiritual points. They were chiefly solicitous for purity of doctrine; and as they only supported the clergy in their pretensions for the attainment of that object, they would soon have judged the harassing interference of the ecclesiastical body with their domestic affairs, and their rigorous proceedings, by the principles promulgated from the pulpit, and applied to the Throne for protection against such evils. It was from this view, doubtless, that James was advised to permit the clergy to proceed in their own way, as they would soon become so intolerable, that the people would drive them out of the country; and the history of the Scottish church, and character of the rigid Presbyterians, prove its correctness.

With intentions corresponding to the political sentiments expressed in the 'Basilicon Doron,' did James, while he was professing the sincerest attachment to its present form, proceed to new-model the church, expecting to undermine it by a gradual and insidious process. The clergy had frequently complained that the ecclesiastical estate was either not represented at all, or represented by laics and other unqualified persons, who had no authority to vote in its behalf; and a plan seems to have been entertained of sending to parliament deputies appointed by a General Assembly.* But the most sharp-sighted and purest of the ministry, who foresaw the consequences of elevating their brethren to that station, proposed that the deputies should be laymen, and annually

* Calderwood, pp. 208, 412.

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chosen.* This did not quadrate with the king's views, and, therefore, by dexterous manœuvring and gross corruption,† he obtained the consent of an assembly to the following plan:—That six ministers should be nominated by the assembly for every vacant bishopric, out of which number the king should either appoint one, or, if the whole were disagreeable to him, immediately call for a fresh nomination, from whom one should be imperatively chosen. But they were to submit their public conduct to the judgment of every assembly, in which they could have no voice unless elected by the presbytery. They might likewise be deposed by the king and assembly.‡

It has been argued that the opposition this measure encountered arose entirely from an extraordinary self-denial and rigid attachment to their own system, which made the clergy equally overlook hopes of preferment and the dignity it was calculated to confer upon the whole order.§ But this view bespeaks little insight into the springs of human actions, as well as very limited notions of real dignity; and is equally contradicted by the after-defection of so many, through the influence of bribery and preferment, and by the accounts which the staunchest of the clergy have themselves transmitted. It has been seen that the king's object was indisputably to render the church subservient to his will. The evidence is equally clear that the opponents of the measure described in it a plan to raise a few tools of government at the expense of the general body, and that their zeal against it was ascribed by the court party to pride and ambition. The clergy were then a powerful, and, conse-

* Calderwood, pp. 418–430, he tells us that the vote was carried in the assembly by a small majority. Mr. Gilbert Bodie, a 'drunken Orkney ass, led the ring—the rest of the north followed—all for the body, with small regard to the spirit' (see p. 429 *et seq.*).

† Calderwood, pp. 401, 403, 410, 414.

‡ Spottiswoode, pp. 449, 452, 456. This author tells us that this arrangement was intended by the king to be merely temporary, till the public feeling was prepared to submit to greater innovation.

§ Robertson has taken this ground, and Wight, in his treatise *On Elections*, has servilely followed him in it (see Calderwood, p. 441).

quently, a dignified body, admitting superiority in no bishops whatever, and obtaining reverence from all classes; even the king beheld them with fear, and showed every token of respect.* By the establishment of episcopacy, a few favourites of court obtained distinction; the rest, under their control, met with as little respect from the higher ranks as from their superiors in the church. The poor curate derives small dignity from the honours and emoluments of the Archbishop of Canterbury. In opposing the introduction of episcopacy, therefore, the clergy advocated their own interest, and studied the means of supporting their station in the community.† Nor did they conceal their sentiments; the wisest and purest of the body thus expressed themselves regarding this act of assembly:—‘That it would break the bars of all their caveats, and without doubt establish *lordship*’ (in the bishops appointed according to the plan) ‘*over their brethren*, time strengthening opinion, and custom confirming conceit.’‡ ‘That all caveats would not prevent the bishops *from keeping pre-eminence and lordship over their brethren*; for that they would be so esteemed and saluted amongst the rest of the lords in court and parliament, and their manners being framed thereto, they would look sour if they wanted the same names in the kirk and amongst the brethren, otherwise condemn them, and endeavour the overthrow of the plat.’§ The insidious

* The reader would perceive that, in his general address to the whole *states*, including the church, the king gives the precedence to the clergy and other office-bearers of the kirk.

† Calderwood, p. 431. If the reader will consult this author in the page referred to, he will perceive that the clergy were a politic and penetrating generation.

‡ Archbishop Cranmer, in a letter to Lord Cromwell, shortly after England had thrown off the papal yoke, containing a vindication of himself for using the style of *Totius*

Anglicæ Primas, and his so soon visiting Winton diocese, against the complaints of Stephen Gardner, Bishop of Winton, justly observes—‘I doubt not butt all the bushoppes of England would gladly have had the archbushopp's both authoritie and title taken awaye, that they mighte have been equell together, which well appeareth by the many contentions against the archbushoppes for jurisdiction in the court of Rome’ (Scott's *Somers' Tracts*, vol. i. p. 49).

§ Calderwood, p. 431–3, 4.

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intention of the measure they likened to the art of Sinon, in persuading the Trojans to introduce the wooden horse into the city; and one exclaimed, 'Busk, busk, busk him as bonnily as ye can, and bring him in as fairly as ye will; we see him well enough; we see the horns of his mitre.'* Indeed, what the hypocrisy of James was calculated to conceal, his literary vanity had divulged. Seven copies only of the 'Basilicon Doron' were printed, and these cautiously circulated amongst a select number of individuals whose secrecy was depended on; but it is a trite remark, that a secret can never be safe with a number of men, and, therefore, in spite of all precautions, one of the ministry saw the work, and communicated to his brethren some of the principal passages regarding the church.† Had any doubt remained in their minds as to the motives of the king, this must have removed them; and the most vehement protestations by him to the contrary could only serve to rouse resentment at his treachery. His meanness on this occasion tended to the same purpose. Knowing

* J. Melville's *Memoirs*, M.S. p. 326 *et seq.* By the way, Andrew Melville's Latin poetry has been admired; but the specimens of English poetry by Mr. James are execrably bad. He has one, following up the simile of Sinon.—N.B. *Busk* signifies to dress (Calderwood, p. 415; see also pp. 449, 457, 461–7).—N.B. There was at this time a fearful eclipse of the sun. By the way, the miracles of that period were manifold. The following is a passage from Spottiswoode, regarding the miracles in 1556, which accompanied the dawning of the Reformation, and took place nine years before his own birth. Besides a comet—according to custom—'great rivers in the midst of winter dried up, and in summer swelled so high, as divers villages were therewith drowned, and numbers of cattle feeding in the valley-grounds carried to the sea; whales of a huge greatness were cast out into sundry parts of the river Forth; hailstones of the bigness of a dove's

egg, falling on many parts, destroyed abundance of corns; and, which was most terrible, a fiery dragon was seen to fly low upon the earth, vomiting forth fire, both in the day and night season, which lasted a long time, and put people to a necessity of watching their houses and corn-yards' (p. 94). Is it not most strange that an author expecting to be believed, and who had taken up the pen to defend episcopacy against the Presbyterian party, and had, consequently, numerous bitter enemies, should have disgraced his pages with such a statement? Is it not still stranger, that the party writers, however disposed to charge each other with falsehood in other respects, should, as if by mutual convention, permit such absurdities to pass without observation? They dealt not so with the Roman Catholics, whose miracles were exposed because they were calculated to support the system attacked.

† J. Melville's *Mem.* M.S. p. 331 *et seq.*; Calderwood, p. 428.

none *durst* exhibit the book itself, so as to justify thester who had made the disclosure, he issued a warrant is apprehension, and would probably have inflicted unishment of falsehood, or leasing-making, upon an urable individual, had he not escaped persecution by

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iving gained so important a point, James watched opportunity of introducing greater changes, and his sion to the English throne enabled him to execute chemes with an infinitely higher hand.† His fury oon directed against the most eminent independent bers of the church: some he banished, some he con-, others he deposed.‡ Having struck terror by his edings, he endeavoured to gain the rest of the body orruption. Preferments and hopes of preferment ed some; bribes, by money sent from England, won s. The defection of many enabled him to adopt either insidious or arbitrary for silencing the reder. Bishops were appointed constant moderators of

ow then could Mr. Hume err ely as to give the following — ‘James ventured to say in *Basilicon Doron*, published while in Scotland, “I protest before nd since I am here as upon tament, it is no place for me in, that ye shall never find ay border or Highland thieves ingratitute, and more vile d perjuries, than with these anatic spirits: and suffer not ncipal of them to brook the

Now, though it be true that ssage is to be found in the or., and that it was printed James was in Scotland, it was blished, nor *durst* he have (see Calderwood, an author, way, whom Mr. Hume does ear to have consulted, though st faithful historian of the church, pp. 428, 435). At ry time the king declared, any protestations, that he did h the Anglican kind of bishops wood, p. 418). Yet, that he

had fully intended it, his great apologist, Spottiswoode, assures us (p. 453). Though the work entitled *Basilicon Doron* was not published, Spottiswoode has the effrontery to allege that it greatly conciliated the affections of the English, and paved the way to the king’s succession (p. 456).

† Besides direct power, his influence, arising from two sources—his power to reward, and the insecurity of church property enjoyed by the nobles—was very great. We have, in the publication of *Letters* by Lord Hailes, a striking proof of the abject baseness of the court adherents. Lord Fleming, in a letter to the king, expresses his zealous desire to follow his master in all matters, either of church or state, declaring that different conduct was inexcusable in a subject (Letter 2nd).

‡ Calderwood, pp. 498, 549, 564. We shall comprehend this likewise in other quotations immediately.

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presbyteries, synods, and assemblies, in order to prevent the rights of the Presbyterian church from being even the subject of discussion;* and (in 1609) two Courts of High Commission, afterwards united, were constituted by the mere will of the prince.† Under the cognizance of this tribunal fell all acts and words importing a dislike to the estate of bishops—adulteries, fornications, and, in short, most offences against morals or society. The judges, chiefly ecclesiastics, and all tools of government, were empowered to depose ministers, and to inflict punishment upon the subjects in general, by arbitrary fines and imprisonment, and even by the terrible sentence of excommunication, which, it was specially provided for by a statute passed this very year, should be accompanied with, as one of its consequences, extrusion of the excommunicated from their lands, rooms, and possessions.‡ ‘This commission,’ says Calderwood, truly, ‘put the king in possession of that which he had long time hunted for, to wit, of absolute power, to use the bodies and goods of his subjects at pleasure, without form or process of the common law.’§ In this way was episcopacy established; and to ensure success to the king’s views, and power to the bishops, temporal offices of the highest description were heaped upon them.|| Yet, after they had become lords in parliament, council, exchequer, session, lords of temporal lands and regalities, patrons of benefices, moderators of the General Assembly, and commissioners in the Court of High Commission, and were consequently great and terrible to the ministry and other professors of religion, who had already experienced the iniquity of the times in the exile or imprisonment of their leaders, the king and his coadjutors still feared a General Assembly.¶

1609. As, however, the subversion of liberty is most surely

* Calderwood, pp. 550, 551, 558, 562-4, 570-2-8, 588, 589. Spottiswoode, p. 500 *et seq.*

† Calderwood, pp. 580-4.

‡ Pp. 615-18, 620, 621.

§ Calderwood, p. 619. For proofs of the treachery and ambition of bishops, see 602.

|| See pp. 612, 615, 621.

¶ Calderwood, p. 621.

accomplished through the medium of popular forms, an assembly—or rather a meeting under that name—was adjudged necessary for perfecting the designs of the court. But a free election they durst not trust; the very time of meeting was studiously concealed; select individuals were summoned by the special order of the king, without even the appearance of public choice.* An assembly so composed, and influenced, after all, by the corrupt acts of bribery, promises, threats,† was easily induced to give its sanction to the preconceived conclusions of the court; and these were immediately enforced by a terrible proclamation, forbidding the subject, of whatever degree, to impugn them either in public or private, and commanding magistrates to imprison such as should infringe the injunction till the lords of the council determined their punishment. Nay, private individuals were ordered, under the penalty of being themselves adjudged guilty, to inform against those who, in their hearing, transgressed the command. ‘An evil deed,’ observes Calderwood, with much truth, ‘hath need to be well backed.’‡

Having, by such crooked policy and arbitrary proceedings, established episcopacy upon the ruins of the Presbyterian polity, the next object of James was to substitute the rites and ceremonies of England—abhorred by the people—for the simplicity of the ancient worship. For this purpose he visited his native country in 1617, and, though he had sufficient prudence to abstain from changes,

* Calderwood, pp. 621, 622.

† Calderwood, p. 624. It was said that presbytery was a word the king could not hear with patience (pp. 625, 630). The king calls himself God’s lieutenant, and declares his intention of acting without the church, if they did not do the thing themselves (pp. 631, 632, 639; in pp. 640, 641, the temper of both parties may be seen). Mr. D. Spence, at the synod of St. Andrew’s, observed, that ‘a neutral is not fit to live in a commonwealth, let be in the

kirk of God.’ The sentiment is just. He is unworthy of the protection of civil society who, when its rights are at stake, declines to share the danger: on the other hand, there is such a thing as moderation, which, in the struggle of parties, is apt to be forgotten; and it is well remarked by Swift, that many of the most virtuous men have died in obscurity, or perished on a scaffold, because they held the golden mean.

‡ Calderwood, p. 639.

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recommended earnestly by Laud, who accompanied him, which he perceived would probably kindle the flame of rebellion throughout the kingdom,* he proceeded far enough to disgust the people without satisfying himself. The Scotch bishops, who, like renegadoes in general, were eager, upon any terms, to purchase the favour of their new master, as a recompense for conscious treachery, and the consequent abhorrence of their old friends, and to revenge upon the latter the feelings of which they knew themselves to be worthy objects, had flattered the king with the prospect of an easy compliance in the people.† But symptoms of disgust so strong soon broke out‡—many of the nobility, trembling for the church property they had acquired, having joined the opposition§—as damped his hopes, displeased him at the bishops, whom he called dolts and deceivers,|| and led him to resist, and be offended at the urgent advice of Laud to introduce the rites by force.¶ In the imperious tone, however, with which he executed part of his plan, and the humour with which he relinquished the rest, may be traced ample proof of an arbitrary disposition.** Some of the ministry, amongst others Calderwood the historian, had met to protest to parliament against an act which was secretly prepared to declare that, whatever should be determined by the king

* Hacket's *Life of Williams*, part i. p. 64.

† Calderwood has preserved a letter of Bishop Gladstone's, which is in the true strain of a bishop suddenly exalted, and of a renegado. He says, 'all men follow us and hunt for our favour' (p. 645). The king declared that his motive for coming to Scotland was a Solomon-like affection to see his native and ancient kingdom, and earnest desire to perform some parts of his kingly office, &c. (p. 673.)

‡ The people were offended with the decoration of Holyrood House with images, &c. (Calderwood, p. 673).

§ Calderwood, p. 675.

|| Calderwood, p. 685.

¶ Hacket's *Life of Williams*, part i. p. 64.

Yet it must be observed, that in regard to the decking out of the chapel at Holyrood House with images, James lost all patience with the bishops for dissuading him from the measure (see a letter of reproof from him to the Archbishop of St. Andrew's, the Bishops of Aberdeen, Brechin, and Galloway, and certain ministers of Edinburgh, on that subject: *Letters* published by Lord Hailes, p. 79).

** Calderwood, pp. 679, 681, 684, 685, 686.

n regard to rites, with the advice of the prelates and a competent number of the clergy, by which might be meant any number, should receive the force and operation of a law. The two who had subscribed this protest, and Calderwood who had drawn it, were summoned before the High Commission, where James himself presided, and poured out insulting language that would have degraded the meanest judge; and, after the mockery of a trial, the two who subscribed that protest were punished with deprivation and imprisonment, and Calderwood himself with exile.*

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The object of the king at this time was chiefly accomplished by five Articles, afterwards known by the name of the Five Articles of Perth, from having been ratified by a packed and overawed assembly there, and which were to this purpose:—I. The first commanded communicants to receive the sacrament kneeling. II. The second enjoined or permitted the administration of the Lord's Supper privately to the sick. III. The third allowed the baptism of children to be performed privately, and commanded that the priest should admonish the people never to defer it longer than the next Sunday after the birth. IV. The fourth commanded that children of eight years old should be catechised and blessed by the minister, or, in other words, confirmed. V. The fifth ordered the observance of certain festivals commemorating the descent of the Spirit, the birth, passion, resurrection, and ascension of Christ. Though, as the only way to insure obedience in the people, it was necessary to have the Articles

Five Arti-
cles of
Perth.

* Calderwood says that the king at first intended to have sent him to Virginia (pp. 685, 686). The king's indecent conduct to Calderwood (pp. 681, 682).

The impudence of the bishops was extreme. Spottiswoode the historian, then Archbishop of St. Andrew's, in a sermon at this time, railed against Andrew Melville as an innovator and so forth. 'So impudent

and shameless was the man,' says Calderwood, 'who in former times durst scarce open his mouth in his presence. He inveighed bitterly against many worthy men of the ministry, who were then resting from their labours, and said some of them were profane men and deserved to be hanged' (p. 689; see farther p. 691).

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sanctioned by the form of an assembly, the means used to influence it were some of them of the coarsest kind.* The expediency of yielding was enforced by the threat of incurring the wrath of authority—imprisonment, deprivation, exile—utter subversion of the estate and order of the church; and, to discourage opposition, it was plainly intimated that neither reasoning nor numbers should prevail.† But the vote of such an assembly could not satisfy the people, and, therefore, severity was resorted to for the purpose of subduing their stubborn spirit.‡ The act of this meeting was likewise afterwards ratified by parliament, to give it additional authority over the public mind.§ The clergy tried to avert such a legislative enactment; but their supplications were intercepted, the chief petitioners imprisoned, and all the clergy, except the ministers of the town, banished for a season from Edinburgh.||

At this distance of time, when the various notions which have been broached and maintained regarding the institutions of Christianity have ceased to agitate the human

* Calderwood, p. 697, in proof of the method of proceeding; see also pp. 675, 676, 677.

† Calderwood, p. 714.

‡ Calderwood, pp. 732, 736, 749; see the spirit of the people manifested in pp. 734, 753–755. In the Old Kirk, the chief communicants in the new fashion were the lords of session. In the College Kirk, out of 1,600 communicants, only about 20 knelt, and the chief were poor people taken out of the hospital, who durst not refuse. But some of the kneelers ‘knocked on their breast, and lifted up their hands and eyes’ (p. 753). At Easter communion, 1621 (p. 759), there were few communicants, and many sat—the women all did so; and one being urged to kneel, answered, ‘I will either receive it sitting, or not at all’ (see p. 754 for a proof of severity; also p. 811).

§ P. 767 *et seq.* The power of the

bishops was craftily enlarged, and the checks upon them omitted.

Calderwood, pp. 759, 783. Indications of God’s wrath at these innovations were inferred from the appearances of the heavens (p. 783).

The king urged the bishops to carry on the work, now that the Articles were ratified by parliament; and attempted to terrify the people by threatening to remove the courts of justice. ‘But a great number were resolved to stand out against conformity, howbeit the king should burn the town to ashes’ (pp. 784, 786, 811, 812).

The ministers of Edinburgh were detested by the people, for their ambition, avarice, and malice at honest men and godly professors.

|| Spottiswoode, p. 542; Calderwood’s MS. vol. viii. p. 981 *et seq.*; Printed *Hist.* p. 764 *et seq.*

mind, it requires an effort to conceive, or sympathise with, the feelings of our ancestors on the subjects embraced by the Five Articles of Perth. But it ought never to be forgotten that these topics then produced the most violent and tragical effects throughout Europe ; and a little reflection will satisfy us that scenes of a similar kind would probably be again exhibited on such an improper and arbitrary interference of the prince. The first Article is the most material, and we shall therefore dwell on it more particularly. All sects of Christians, with the exception of Quakers, are agreed upon the vital importance to their faith of the Lord's Supper ; but their views of the institution have been various, and maintained with that keenness which the darkness and magnitude of the subject are calculated to inspire. With the famous disputes about transubstantiation, consubstantiation, and the like, all men of enlightened understandings must be acquainted, and we shall not pretend to explain the grounds of difference.* These were testified by the mode of administering the sacrament ; and the Scottish church had valued herself exceedingly on the purity with which this institution had been observed by her, the communicants sitting, according to the supposed manner of the original supper, and dealing the elements from right to left—typical of their familiarity with Christ their head.† Even James himself had been forward, as we have seen, to denounce the

* To such as desire a general acquaintance with ecclesiastical history, and the various opinions which have been broached, I recommend Mosheim's *Church History*. Tillotson justly calls transubstantiation 'the grand burning article' of the Church of Rome (see his sermons *On Transubstantiation*).

† Knox's *Hist.* b. iv. In 1560 petitions were presented to parliament in favour of the Reformation, and amongst the topics complained of, 'transubstantiation, the adoration of Christ's body under the form of bread,' was the first (Spot. p. 150).

In the *Form of Church Policy* it is said that it is only properly administered when it appears highest unto the action of Christ. The defrauding the laity of the cup a damnable error (Spot. pp. 152–3). 'In time of blindness,' it was said, 'the holy sacrament was gazed upon, kneeled unto, carried in procession, and worshipped as Christ Himself' (*First Book of Discipline*; Spot. p. 170; see p. 181; Cald. pp. 25, 40. See treatise denominated *Perth Assembly*, where the Articles proposed there are fully discussed).

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English service as an evil said mass; and in this very Article, which enforces kneeling, it is said, 'That our kirk hath used, since the reformation of religion, to celebrate the holy communion to the people sitting, by reason of the great abuse of kneeling, used in the idolatrous worship of the sacraments of Papists.' Now, gloss over the Article in whatever terms, one of two things is indisputable—either that the act of kneeling was significant of something importing 'the adoration of Christ's body in the form of bread,' or that it was not. If the first, the question immediately is, Do the communicants assent to the thing signified? Let us suppose, which in this instance was the fact, that they do not; it is perfectly obvious that, instead of all sincerity, the essence of religion, the individual who approaches the table, professing by gestures what he denies the truth of, is acting the hypocrite, and, to please an earthly sovereign, disgracing the cause of his Master. To a zealous man, under such circumstances, the terrible denunciation of the apostle, 'He who eateth this bread and drinketh this cup unworthily,' &c., must immediately occur. Take, now, the other view, which was the one adopted by the wily bishops to serve the present turn, 'that nothing was altered in substance, but only in ritual matters.' The answer is best conceived in the words of the opposing ministers, 'that all which belonged to the institution consisted in rites.'* If a ceremony be necessary at all, it ought undoubtedly to be administered according to the communicant's idea of it, otherwise it ceases to be that by which he is to testify his creed, and fulfil the command. Besides, the abhorrence of the mass had, in Scotland, been extended by association to the act of kneeling, in so much that genuflexions were thenceforth discontinued in addressing the Deity. Much of the same reasoning applies to the other Articles; but indeed it would be trifling with the reader's patience to argue this farther.

* Calderwood, pp. 724-5, 734.

it in religion, and the less in-
articles were, the more culpable
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1 by his own statement; inno-
ie every notion of liberty, and
of what he intended.*

fied the Articles was the last
1 James had prudence enough

James Melville observed that the church could only be safe with as-semblies and presbyteries; 'for,' says he, 'who shall take order therewith? The court and bishops? As well as Martine Elliot and Will of Kinmouth, with stealing on the borders' (Cald. p. 168). By the way, those who peruse the whole of J. Melville's letter on this subject will scarcely think him entitled to the character of mild, which was attributed to him (see Spottiswoode, p. 534). James says, 'Either we and this church must be held idolatrous in this point of kneeling, or they reputed rebellious knaves for refusing the same.' Yet he was so far from persecuting the Catholics, that he hazarded a rupture with the English parliament, and practised the grossest hypocrisy in suspending the laws against them. Nay, he entertained a great partiality for that church, though he disclaimed it publicly. But Catholicism is favourable to arbitrary government and the divine right of kings (see the pretensions to a divine right by this monarch, in his *Bas. Dor.*, *New Law of Free Monarchies*, *Speeches*, and *Spot.* p. 537).

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ment of
Scotland.

to abstain from farther innovations when he perceived the violent effects produced by these, he, with the strangest inconsistency, proceeded to obtrude them, and afterwards even something more,* by persecution, upon an indignant people, when his death gave that kingdom a short respite by devolving the odious task upon his son.†

The governments of Scotland and England bore a striking analogy in some respects, but in others they differed materially. The Commons of England had, in the thirteenth century, begun to form a distinct branch of the legislature; but in Scotland, though representatives of burghs were early admitted, no commissioners for shires appear to have attended till the year 1587. By the theory of the Scotch, and, as it is generally believed, of the English constitution likewise, all tenants of the Crown—or barons, as they were denominated—were entitled to sit in parliament; but many, from the smallness of their livings, and the overwhelming influence of the great aristocracy, had forborne to attend an assembly where they were merely objects of disdain. Their presence, however, being accounted useful to the sovereign—as it was no less their interest than his to curb the excessive power of the nobles, and their consequent abuse of it—a statute was procured by James I., in 1425, enjoining their attendance. But the impracticability of the attempt led to its abandonment, and occasioned the statute 1427, allowing the barons in the various shires to choose commissioners, or deputies, annually, to represent their body in the national assembly, and reserving power to the monarch to summon the nobles by precept.‡ This statute, it will be observed, was nearly

* Cald. p. 800.

† Cald. pp. 786, 811, 812. Calderwood tells us there was a great tempest, with an extraordinary tide, and direful effects, the day King Charles was proclaimed, and another at the funeral of James (pp. 815–16). 'Upon the Lord's-day following' (the death of James), 'the ministers of Edin-

burgh commended King James as the most religious and peaceable prince that ever was in the world. Mr. John Adamson said, King David had more faults than he had, for he committed both adultery and murder, whereof King James was not guilty.
‡ See Scots Acts. Mr. Miller thinks that this throws much light

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the representation of the Com-
; nor was that the only ground
the right of voting was not
the Crown, but was indisput-
lders; and one ingenious man
s even maintained that it was
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measure was of being intro-
propriators who held of the
been the state of property and
gement entirely failed.† The
a right of representation, and
imes attended; the commis-

The lesser barons, perceiving
them from the tyranny of the
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s all the estates sat in one
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missioners were treated with
re haughty nobles, and there-

But a practice which had
patch of business in Scotland,
ortance as an ingredient of the

there were parliaments before the
Conquest, that appeareth in a book
which a grave member of this house
delivered unto me, which is entitled,
Modus tenendi Parliamentum, &c.;
and this book declareth how we all
sat together; but the Commons sit-
ting in the presence of the king and
among the nobles, disliked it, and
found fault that they had not free li-
berty to speak. And upon this reason,
that they might speak more freely,
being out of the royal sight of the
king and not amongst the great lords,
so far their betters, the house was
divided and came to sit asunder'
(D'Ewes, p. 515).

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constitution. The parliament had early devised the plan of selecting a committee to prepare the bills, or articles, which were to form the subjects of discussion by the house; but, in process of time, an idea began to prevail that no bill, or article, could be submitted to the legislature except by this organ—a circumstance which threw an immense weight into the monarchical scale, since, in order to crush any bill in embryo, it was merely necessary to secure a majority of the committee, or lords of articles. And the method of choosing that body promised the means of success; for it appears that, in the year 1560, the spiritual lords elected the temporal who were to be on the articles, and the temporal the spiritual.* Now, as the spiritual became entirely dependent on the prince, the members from their body were likely to be well affected to him, and that estate would take especial care to pitch upon similarly disposed individuals from amongst the peers. The burgesses chose their own. At that period the gain to the sovereign would be small, as anything deemed by the aristocracy subversive of their rights would be disregarded; but afterwards matters were entirely altered.

The Scotch real representation of barons owed its origin to the statute of James VI. 1587, c. 114, which enjoined the sending of deputies or commissioners from the respective shires, but restricted the right of suffrage to free tenants of the Crown possessed of 40s. annual rent, and actually residing within the county. This statute, indeed, only confirmed with a limitation the preceding one of James I. which had become a dead letter; and its object was to afford the prince a counterpoise to the nobility. That it arose from no benevolent motive, is evident from

* We learn from Spottiswoode (pp. 149–50), that, in choosing the lords of the Articles, Jan. 1560, the Romish prelates complained bitterly that the members of the church that were chosen were either apostates or

laics; but, says the author, 'the course was changed, and it behoved them to take law who had formerly given it to others' (see *Wight On Elections*, p. 90; see *Henry's Hist.* vol. xii. p. 177).

vised by this monarch soon afterwards, to render its organs of his will, the passing of which can be accounted for from the supineness or even security of aristocracy, produced by excessive power, or from dealing with the record.* By statute 1594, c. 1, under the pretext of relieving parliament of perilous and important matters (a specious pretext is never wanted), there should be a convention, composed of individuals from each estate, appointed to meet and lay before the parliament, for the purpose of settling all articles regarding either general laws or private parties, which, however, were in the first instance to be presented to the clerk register, and by him sent to the convention, who again were to prepare and read the lords of the articles. Now, it is singular that no provision was made for the election of this previous convention so that it devolved necessarily upon the Crown the circumstance which exceedingly heightens our astonishment at the statute. For, in this way, no bill obnoxious to the court could ever reach the lords of Articles, but had to pass through first an individual officer of the court; and secondly, a committee of its nomination. Though this law was permitted to disgrace the court, the grossness of its tendency was too apparent to be reduced to practice.† (something of the kind,

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Acts. Spottiswoode says the nobles opposed the act

for want of intelligence in Scotland that President Forbes had put a stop to the practice pursued by his predecessors of altering the judgments of the Supreme Court after they were pronounced. The judgments were not annulled until the time of Forbes, when in the president's chamber he procured an alteration of the law by a provision to have read aloud openly in presence of the court.

† Yet both in 1613 and in 1617 James nominated the lords of Articles (see the case of Balfour of Burley, in Hailes's *Coll.* for the first, and Spottiswoode, p. 531, for the second). The author tells us, with apparent condemnation of the parliament, that in the choice of the lords of Articles, the persons nominated by the king were passed by as suspected, and they were for refusing the admission of any crown officers but the chancellor, treasurer, and clerk of the rolls; but they were all ultimately admitted.

In 1621 a proclamation was issued ordaining all petitions to be pre-

CONSTITUTIONAL HISTORY OF THE BRITISH EMPIRE.

however, was resorted to in 1621) till 1633, when Charles (a fact that seems entirely to have escaped historians writers on this subject) used it as an engine for accomplishment of his arbitrary designs.* After the session to the English throne, when the sovereign gained an immense increase of power, a new device, glaring, though equally efficacious, was resorted to.† The bishops, mere tools of government, having been created against the wishes of the people, nominated, as former eight noblemen for the articles; the nobles, eight bishops and these sixteen again nominated eight barons or commissioners of shires, and eight burgesses—a plan which the nomination altogether in the hands of the bishops, by consequence in those of the Crown. With even this however, James was unsatisfied; and therefore, as if to prevent the possibility of failure, the principal officers of state were added to the number; and while no article for the subject could obtain a hearing without the consent of the committee, a special proviso was made, by the Act of 1594, in favour of the sovereign, empowering him to present articles directly at any period. By this device a law-obnoxious to parliament might be rejected; a proposal, disagreeable to the king, could not even be the subject of discussion.‡

sented, within a limited time, to the clerk register, that they might be examined by a certain number of the council before the meeting of parliament, as from the shortness of time allowed to parliament, the lords of Articles could not thoroughly sift them (Calderwood's *MS. Hist. Adv. Lib.* vol. viii. p. 978). The inference is clear, and accordingly the Presbyterian clergy were told by the clerk register that he doubted whether he could receive their supplication (*Ib.* p. 998).

* It is very remarkable that this fact escaped not only Hailes, but Laing and others, yet it rests on the best authority (Balfour's *Annals, MS. Advocates' Lib.* vol. ii. p. 67 *et seq.*).

† Those who look into the Balfour of Burley, in Hailes' p. 40 *et seq.*, will see what was used in the election of Articles after James's ascent to the English throne.

‡ See late publication of Acts for a list of lords of Articles at the beginning of each reign. Officers of state were first 1606. The number varied to eight; and the general from each of the state. The Act of James VI., joined not fewer than more than ten. N.B. Act allowing the officers put upon the Articles II., which confirms

r the union of the crowns, society underwent a
 l change. The inveterate feuds of the nobility
 oppressed, associations for mutual security or offence
 ited, and the power of the prince exalted above
 stocracy. Salutory as this change on a slight in-
 n may appear, it could not fail to be productive of
 to the people, in a somewhat similar way to the
 hange of manners in England. Manufactures had
 ong imported for staples; but, as the power and
 tion of the aristocracy arose more from the number
 r followers than the costliness of their living, the
 y was trifling. Upon the suppression of feuds,
 er, numerous dependents became of less conse-
 ; revenue, from many causes, of infinitely more.
 ighbourhood of England, and the intercourse with
 , affected Scotch manners; but the removal of the
 o the sister kingdom attracting the gay, who re-
 with splendour to their native country, rapidly
 ed a spirit of imitation; and as courtiers, to sup-
 eir credit with the English nobility, endeavoured
 ve a larger revenue from their estates, which could
 e accomplished by the dismissal of a numerous
 enantry for such as could embark in larger under-
 ,* their example must have been to a certain
 quickly followed. But the free importation of
 ictures, preventing the growth of them in a country
 te alike of capital and skill, and exposed to so
 discouragements from an oppressive government,

CHAP.
 IV.
 State of
 society.

see Spottiswoode, pp. 488,
 e arbitrary conduct of James
 aced in every act of govern-
 he Lord Balfour of Burley
 n some stiffness in the choice
 rds of Articles, and he was
 to persecution. Commis-
 orsooth, were appointed to
 nto his conduct, &c. (see
 ublished by Lord Hailes,
 l.
 lailes infers that the bishops

were not all in the interest of the
 Crown, because a court list of such as
 were thought fit to pass upon the Ar-
 ticles, and were therefore to be elected,
 was deemed necessary. But is there
 no difference in talent, dexterity in
 intrigue, and want of scrupulosity in
 every point, amongst the adherents
 of a prince?

* It would not be difficult to show,
 however, that extensive tracts were,
 at a much earlier period, let on lease.

CHAP.
IV.
State of
the High-
lands.

Hitherto our attention has been occupied chiefly the most civilised part of Scotland ; we shall now c it to the Highlands, the Isles, and the Borders. Highlands were inhabited by a race little removed barbarism, who, though they acknowledged a non subjection to the Throne, despised its laws. Their guage bore no analogy to that elsewhere in use, and manners and dress were equally peculiar. The w were divided into clans, each of which, under the minion of a chief, or chieftain, formed a species of p cipality that maintained with its neighbours the rela of war and peace. The members of a clan were tinguished by one common patronymic, and boaste an original descent from the same family of which chief or chieftain was the representative.* Nor, the nature of things, could the boast be destitute of f dation ; for as the chief or chieftain's right of prop in the land possessed by the clan was universally ackn ledged, it was natural for him to provide in a partic manner, in proportion to the degree, for those who s within the generally acknowledged degrees of proping to himself ; and it was his interest to encourage the marry—to which, indeed, a comparative liberal prov would of itself sufficiently dispose them—that he m be furnished with a trusty family band, ready to cl any defection in his other followers. But the terri being fully peopled, he could only provide for his mediate connections at the expense of other vassals, w removal to an inferior station must again have suppl those who had occupied it. Hence there would al be an overflow, from the higher ranks pressing upon

cipline it was determined that there should be a school in every parish (Spottiswoode, p. 160). All the chief representations of the clergy about the church livings contain a demand for schools. Very soon after the accession to the English throne, it was resolved that schools should

only be taught by such as the bi approved of (Calderwood, p. 47

* Leslie, *De Moribus Scot*
The Highland garb seems to been the same, or nearly so, s Irish, which is afterwards den by us.

g away the lower, till, in process of time, they all with safety boast of a common descent. From the loss of property, the power of the chief or chieftain was absolute. His numerous family connections, who were interested in supporting his authority, secured him against a general revolt; and as every clan was necessarily swarmed with surplus population, and chiefs had neither means, nor would be inclined to harbour refugees, they should encourage mutiny in their own followers. The example of success, individuals had no alternative of submission or death, which might be inflicted at the command of the chief or chieftain. But as his rank and power were liable to no dispute, and the boasted origin of his followers in arms reflected glory on himself, by a virtuous and gallant kindred at his beck, he permitted a species of familiarity, which, while it was incapable of misconstruction, sweetened their bondage, and secured their attachment. Like all savages, though fond of labour, they delighted in the fatigues and dangers of war or of predatory excursions; and as they divided the booty, or were benefited by any additional plunder, into the surrender of which a neighbour had been harassed, and again suffered with their lord all the calamities of invasion, they were inflamed with the same passions, and devoted by passion to his service.*

The inhabitants of the Isles were still more savage than their neighbours on the mountains;† and James, who

in the story we shall give relating to the Isles will prove this. But, when one party frequently destroyed, and murdered incessantly, all must have felt the same mode, p. 390).

The following account, from the code (p. 348), of a feud in which presents a horrid picture:— James and M'Lain, two of the men, were connected by M'Koneil having married M'Lain's sister. M'Lain, having resided on the Continent, had

learned some civility and good manners, which procured him the respect of his neighbours, and the envy and rancorous hatred of M'Koneil, who, after many petty quarrels, laid a snare for his life. He proposed a visit to M'Lain, and that the latter should accompany him to his own country. M'Lain cheerfully received him, but declined to give an answer about accompanying him.

M'Koneil visited him, and remained four or five days with every token of amity, and then entreated

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IV.

seems to have considered his subjects as peculiarly his property as the live stock in his parks, and who was anxious for the improvement of part of the territory over which he had been appointed chief magistrate, proposed extermination as the only means of introducing refinement, and therefore made gifts of the territory to certain individuals, with power to execute his purpose. But the project ended in the discomfiture of the invaders.

Borders.

Prior to the union of the Crowns, the Borders were in a pastoral state; the inhabitants a species of freebooters, of depraved habits, ever prepared to make incursions into the sister kingdom, and not unfrequently disposed to plunder their own countrymen, by whom they were be-

the other's company home, saying, *that he would leave his eldest son and a brother-german pledges for his safety.* Overcome with importunity, M'Lain consented, but declined the pledges, lest he should seem to distrust him; he took with him, however, forty-five of his kindred and servants. When they arrived at Kintyre, they were welcomed with liberal feasting, according to that people's custom. But at night, after they had retired to rest in a separate house, M'Koneil beset the house, and called forth the other to drink. To this he replied, that they had already drunk too much, and that it was now time to rest. 'But it is my will,' said the other, 'that you rise and come forth.' M'Lain began to suspect treachery. He, however, dressed himself, with his men, and opened the door, when, perceiving a company in arms, and M'Koneil with his sword drawn, he asked what the matter was, and if he intended to break faith? 'No faith,' said the other. 'I gave none, and must now have an account of you and your friends for the wrongs I have received.' M'Lain had taken his nephew, a little child, to bed with him, and being put to defence, kept the child on his left shoulder, by way of a targe. The child cried

to his uncle for mercy, and M'Koneil, moved at the sight of his own child in such peril, promised to spare M'Lain's life, provided he would surrender his weapons, and become a prisoner. The other was fain to comply, and was conducted under a guard to another house. His followers, with the exception of two, whom M'Koneil refused to spare, surrendered on similar terms. The two defended themselves so dexterously, that the house was obliged to be fired, and they were consumed in it. Notwithstanding the promise, however, the rest were all beheaded next day in M'Lain's sight: and an accident—the falling of M'Koneil from his horse and breaking his leg—was the only cause for prolonging M'Lain's life. The king, hearing of this, sent a herald with orders to deliver M'Lain; but still he was detained, and only got his liberty on the most humiliating terms. This he no sooner acquired than, in defiance of the treaty—notwithstanding all the civility he had learned on the Continent—he fell upon M'Koneil's bounds, burning and killing man, woman, and child (see further as to the state of the Isles, Spot. pp. 273, 300, 411, 415, 416, 519; King James's Works).

with dismay.* Their habits calculated them for
 aptitude in resisting an enemy; and, as their flocks
 could easily be removed to a distance, invasion
 could spread the terror, or to inflict the calamities,
 it occurred on occasions to a well-cultivated district. The
 of the respective countries had been much harassed
 licentiousness of the borderers, and the harmony
 in the kingdoms often interrupted. As, therefore,
 texts for their military habits were, on the union,
 and, the king used his power to curb their lawless
 and in a short time the fields began to be cultivated
 and manners to change.†

CHAP.
 IV.

the month of Julie' (anno
 the king went with an armie
 men to Easdale' (Eskdale),
 bend and punish thieves.'—
 Armstrong, a notable thief,
 compelled the English to
 mail, and was terrible in
 as to the Lord Maxwell
 (the warden, I believe),
 was coming to the king, en-
 some courtiers, but without
 conduct, he was intercepted
 horsemen lying in an am-
 brought to the king as if
 seen apprehendit by them

against his will; he and a great num-
 ber of his companie were hanged'
 (Calderwood's *Mem.* vol. i. p. 80;
 see Buch. *Hist.* I. xiii. c. 39). Cal-
 derwood has done little more than
 translate from Buchanan.

Johnston, p. 55, for some account
 of the Borderers; Nicolson's *Border
 Laws*; Spottiswoode, pp. 272, 305,
 306, 402, 413, 414, 434, 448; Leslie.

† On his accession to the English
 throne, James assumed the title of
 King of Great Britain, and ordered
 all the fortresses on the borders to
 be demolished (Spot. p. 486).

CHAPTER V.

STATE OF IRELAND.

CHAP.
V.

THOUGH Ireland was all nominally subjected to the English Throne so early as the time of Henry II., it was only by the great exertions of Elizabeth, towards the close of her reign, that James was, in the beginning of his, enabled to establish the authority of the Crown in every quarter of that island.

At the first invasion by the English, the Irish approximated to the lowest stage of barbarism; and the measures of the invaders, far from being calculated to diffuse civilisation, obstructed improvement, and, if possible, reduced the inhabitants to still greater mental degradation. They were divided into small septs; and powerful English adventurers having obtained from the Crown grants of extensive tracts for the purpose of colonization, drove a divided people before them, and occupied the soil. The septs that were thus expelled from their habitations in vain sought an asylum in the more inaccessible parts of the country, since hostile septs, to which they were as invaders, opposed their inroads. The new settlements were therefore, in a great measure, attended with extermination; and, in process of time, the natives everywhere perceived that, unless they expelled, or at least kept down, the English settlers, they should be dispossessed of the soil. Large seigniories, which were granted from time to time to great English favourites, augmented the hostility. These could not have been taken advantage of without a general extermination of the natives, which was impracticable; but enough was

done to annoy them and spread universal terror. At some periods the great lords in the English settlements, wishing to render themselves independent of the Crown, began to form alliances with the natives; but the intercourse, instead of civilising them, led to a degeneration of the settlers. To prevent this degeneracy and falling off from their allegiance, tyrannical laws prohibited intercourse under the pains of treason, and, consequently, augmented the bitter hatred of the aboriginal inhabitants, who thus perceived themselves treated as if not entitled to the privileges of humanity. The settlers and the natives were, therefore, in continual hostility of the most rancorous description. Colonies were, in various quarters, from time to time attempted, but the chief settlement was of the pale, which comprised the counties of Dublin, Meath, Louth, Kildare, &c.

The natives, in the meantime, retained their own laws and usages, with the various relations of peace and war, within their different septs. Murder was, as in all barbarous countries, punishable only by fine; but the state of property evinced that manners had not nearly arrived at that stage when the easy remission of such a crime begins to form an exception to the general usages.* The chiefs of the different septs were elective; but, as was to have been expected, it was generally the most powerful relation of the preceding one who obtained the rule. The territory occupied by the sept was conceived to belong to the whole as a body; but the distribution was left to the chief, who, on his election, made a general partition. Even on the death of any individual, he made a new arrangement, by throwing the lands occupied by him into the general mass. It may well be presumed that, in every arrangement, he would take especial care of those for whose assistance he was mainly solicitous. From such uncertainty of possession there could be no

* Consider the civilisation in Homer's time, when a mulct was taken for a murdered relation, and compare it with the savage state of Ireland.

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V.

agricultural improvement. Temporary huts were alone erected ; and so little was grain relied upon, that, says Moryson, ‘the wild Irish, in time of greatest peace, impute covetousness and base birth to him that hath any corn after Christmas ; as if it were a point of nobility to consume all within those festival days.’* Oats were the only species of grain raised ; and these, instead of being thrashed, were burned from the straw †—though the cows, on which they chiefly depended for subsistence, required the fodder. They seldom fed upon animal food, but at times they devoured whatever died, or came in their way, without distinction. Like savages in general, their gluttony was unrestrained while the food lasted ; but then they submitted to privation for a length of time. Their cows, from which their chief subsistence was drawn, they grazed on the mountains during the summer months, themselves inhabiting wretched hovels or boodies, while they carried the herds in the evening to some neighbouring bawn for safety. Their dress corresponded with their general rudeness. It consisted of a large shirt, in which, by the multiplicity of folds, they frequently contrived to include about thirty-six ells, and which they dyed in saffron as a preventive to vermin, and as superseding the necessity of washing—a species of cleanliness not accordant with their habits ; over the shirt was thrown a large mantle, which not unfrequently served as a tent when they lay on watch to commit depredations, concealed the booty they had stolen, and served sometimes even in place of a target against the swords of their enemies. A large bunch of hair, called the ‘glib,’ descended from the forehead ; but, though useful in shielding them from the inclemency of the weather, it was prohibited by the English, as so concealing the features that thieves could not be identified. To cement a union amongst the members of the septs, the children

* *Description of Ireland*, appended to his *History*, p. 375.

† *Id.* p. 374.

of the chiefs and their immediate followers were given out to be nurtured by the inferior people. The affection that sprang from this source was astonishing ; the famous Spenser tells us that once, when he was present at the execution of a notable traitor, Murrough O'Brien, he saw an old woman, his foster-mother, take up the head and suck the blood, saying that the earth was not worthy to drink it, and then steep her face and breast in the streams which flowed from his other quarters, while she tore her hair and shrieked most terribly. There was, however, a species of intercourse maintained between the higher and lower classes, which must have been less agreeable to the latter ; the former took up their habitation with the other, and resided with them so long as they had anything to consume. Nor could the great men feel any privation or inconvenience in residing with the meaner people, since their own houses were wretched erections of clay, or boughs of trees covered with turf. They seem to have distilled very little spirits amongst themselves ; but so addicted were they to intemperance, when they could procure the means, that even the lords and ladies drank promiscuously to the most brutal stage of intoxication. The English-Irish did not escape the infection of this vice. The Irish had amongst them many bards, whose effusions were, according to Spenser, surely the most capable of judging, not destitute of poetical beauty ; but, suited to the manners of the barbarians to whom they were addressed, they incited to lawless deeds.* This description is not, however, appli-

* He says that a young man of ank found bards and rhythmers to raise him and give him encouragement to lawless deeds, for 'little reward, or a share of a stolne cow ; then waxeth he most insolent and selfe madde with the love of himself, and his owne lewd deeds. And, as for words to set forth such lewdness, it is not hard for them to give a goodly and painted show thereunto,

borrowed even from the praises which are proper to vertue itselfe. As of a most notorious thiefe and wicked outlaw' (query—might not such a one have pleaded against the English, *in foro conscientie*, that he was trying to recover part of what his countrymen had been robbed ?), 'which had lived all his lifetime of spoyles and robberies, one of their bards in his praise will say, that he

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V.

cable to the whole native race. The chiefs in various quarters applied, from time to time, for charters from the Crown, and began to adopt a different system.

As the leading septs were ever ready to throw off the semblance of the English yoke, and recover their possessions, frequent attempts were made by the English monarchs to reduce them; but the troops, living at free quarters, only spoiled the country, and it was, as formerly stated, Elizabeth who, after having been long harassed by their petty insurrections, and deeply provoked by the rebellion of Tyrone, in the 39th of her reign, sent an army capable of accomplishing the purpose. New evils then awaited the natives; nearly 600,000 acres of land, in the counties of Limerick, Kerry, Tipperary, and Waterford, in Munster, were forfeited, and disposed of among English undertakers; half a million were likewise disposed of in the counties of Donegal, Tyrone, Derry, Fermanagh, Cavan, and Armagh, besides immense tracts in other quarters, as not occupied on proper titles; while such a rigorous inquisition into the titles of lands was everywhere instituted, every flaw being taken advantage of, that no man could be assured of his possession. Regulations were devised under James for the improvement of the country, but, however judicious in regard to the new settlers, they were fraught with misery to the former natives. The chiefs of septs

was none of the idle milke-sops that was brought up by the fireside, but that most of his days he spent in armes and valiant enterprises; that he did never eat his meat before he had won it with his sword; that he lay not all night sluggin in a cabbin under his mantle, but used commonly to keepe others wakin to defend their lives, and did light his candle at the flames of their houses, to leade him in the darkenesse; that the day was his night, and the night his day; that he loved not to be long woin of wenchas to yeeld to him, but tooke

by force the spoyle of other men's love, and left but lamentation to their lovers; that his musick was not the harpe, nor layes of love, but the cryes of people, and the clashing of armour; and finally, that he died not bewayled of many, but made many waile when he died, that dearly bought his death' (*View of Ireland*, pp. 52, 53, edit. Dublin, 1633). See the estimation in which the bards were held; none durst displease them through fear of being rendered infamous (p. 51).

were not the proprietors of the soil, but merely entrusted with the occasional partition of it amongst the inhabitants, as a subject in which all had an interest. From time to time, however, these chiefs obtained grants of the soil, as if they had been the proprietors; and, now obliged to submit to the English regulations and customs, they brought the great body of the people into dependence as tenants at will, and not unfrequently manifested what was deemed a spirit of improvement, by driving these miserable beings from their habitations, to perish on the mountains, that they might let the land to English settlers. In a short time, however, the appearance of the country underwent a wonderful change, and manifested externally tranquillity and improvement. The natives had, generally speaking, till that period, been treated by the invaders as worse than aliens. The intercourse that now ensued, though it apparently softened the mutual animosity, could not reconcile men who saw foreigners in possession of their soil, and perceived by how precarious a tenure they retained what had not yet been wrested from them.

Religion confirmed the mutual animosity. The late invaders were generally Protestants of the stricter kind. The natives, though too unenlightened to comprehend the principles of any creed, were zealously attached to the Romish priesthood, who, repining at the occupation of all the church livings by adversaries, had no difficulty in teaching their flocks that their oppressors were rebels to heaven. The English-Irish were also Catholics of the fiercest description; and, as well on this ground as through jealousy of the later settlers—who, arriving with more polished manners, were too much inclined to transfer their contempt of the mere Irish to the race that had so long been settled there—they encouraged the Romish clergy, and augmented the differences by a temporary coalition with the natives.

There had been parliaments occasionally called in

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V.

Ireland, from the time of Edward II., but the lords who were summoned were chiefly of the English-Irish, and very limited in number; the few English shires alone sent deputies. When, however, the whole island was subdued, it was throughout divided into shires, and members not only allowed from the respective counties, but from various towns. But the powers of the parliament were extremely limited. Perceiving the aptitude of the English, who were the legislators, to devise laws oppressive to the natives, and injurious to the English Crown, Sir John Poynings, in the reign of Henry VII., introduced a bill, which was passed, and called, from his name, Poynings' law, prohibiting any bill from being introduced into the Irish parliament till it had obtained the previous approbation of the king and his council; and the statute was still rigidly enforced.* Whatever might be the expediency of the law at the period of its enactment, it, in process of time, became an engine of state against the liberties of the people.†

* The utmost privilege accorded to the houses was to allow them, through the medium of committees, to suggest bills to the lord-deputy, or lord-lieutenant and council; who, if they saw occasion, drew the bill and transmitted it to England for the royal approbation under the great seal. If the bill so submitted to parliament was passed as it stood, the matter was brought to a speedy and simple end. If any alteration was made in it, a fresh transmission became necessary. Hence, in the first session of the famous parliament summoned by Strafford for March 1640, we find a number of Acts classed under each of the four following heads—The first transmission, second transmission, third transmission, fourth transmission.

† See Derick, in Scott's *Somers' Tracts*, enriched with some curious notes; Spenser's *Account of Ireland*; Moryson's, and also his *Travels*; Da-

vies' *Discoverie*, a work in which we find few traces of the elegance imputed to it by Mr. Hume. But there were two reasons for his eulogium: one, that he had very little acquaintance with the literature of the period; the other, that he had an attachment to the author, from his impudent defence of the most arbitrary proceedings of his master, James, whose favour he purchased by a prostitution of his talents (see Temple's *History of the Rebellion*; Carte's *Life of Ormonde*, vol. i. p. 10 *et seq.* And here I would recommend to the reader to peruse p. 27 *et seq.* for an instance of tyrannous cruelty sanctioned by James, almost unparalleled).

Wentworth (Strafford), as deputy, strenuously asserted this right, in opposition to the parliament (*Lords' Journals* for 28th July 1634, and 2nd August 1634, pp. 13, 21, 26; *Commons' Journals*, p. 213).

CHAPTER VI.

FROM THE ACCESSION OF CHARLES I. TILL THE DISSOLUTION OF
HIS FIRST PARLIAMENT.

CONTAINING A RAPID SKETCH OF SOME LEADING TRANSACTIONS AT THE CLOSE OF THE PRECEDING REIGN—AS THE BOHEMIAN WAR, WITH THE RUIN OF THE ELECTOR PALATINE AND HIS FAMILY—THE PROJECTED SPANISH MATCH, AND RUPTURE OF THE TREATIES, ETC., WITH THE CHARACTER OF BUCKINGHAM—DEATH OF JAMES, AND ACCESSION OF CHARLES—RELIGION—MARRIAGE WITH HENRIETTA OF FRANCE—THE PROCEEDINGS OF HIS FIRST PARLIAMENT—THE ADJOURNMENT—LOAN OF SHIPS TO FRANCE TO BE USED AGAINST THE PROTESTANTS OF ROCHELLE—REASSEMBLING OF PARLIAMENT, WITH THE RUPTURE AND DISSOLUTION.

THE particular state of affairs at the commencement of this reign cannot be understood without a rapid view of some leading transactions at the close of the last. CHAP.
VI.

Elizabeth, the only daughter of James, had, in the year 1612, married Frederick, elector palatine; and as the marriage promised a league with the German Protestants, it was extremely grateful to the people; but it proved unfortunate. His alliance with the British king induced the Protestant states of Bohemia, in the midst of their distress, to tender him their crown, hoping that with so potent an ally he might be able to rescue them from ruin, and support their privileges; partly, however, through his own indiscretion and meanness, partly through the pusillanimity and folly of the British king, together with other circumstances, Frederick's aspiring hopes were not only disappointed, but himself driven from his hereditary dominions.

The Hussites, whose distinctive name was, after the diffusion of Lutheran principles, sunk in the more general Origin of
war in
Bohemia.

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VI.

An. 1618

one of Protestants, had long enjoyed considerable privileges in Bohemia, particularly in Prague, the native city of their founder. But these had been gradually invaded, and in the year 1618 a measure was taken by the Emperor Matthias, which threatened equally the rights of the Protestants and the independence of the kingdom. Matthias had, in his old age, been persuaded to adopt, as his son and successor, his cousin Ferdinand, Duke of Gratz, a younger branch of the house of Austria, with the view of raising him to the Imperial and Bohemian, as well as to the Hungarian throne; that the different branches of the house of Austria might be bound in strict alliance, and the Catholic party be supported in political ascendancy. In the prosecution of this object, the emperor, for form's sake, resigned the crown of Bohemia, which was elective, and by a partial call of the states, in which Catholics were chiefly comprehended, and over whom the undue influence of the emperor prevailed more than their wishes, procured the election of his adopted son, under the condition of his abstaining from the exercise of royalty during the life of Matthias—a condition to which Ferdinand is alleged not to have adhered. The proceeding depressed the Protestants in the same proportion that it elated the Romish party of the empire, to whom Ferdinand was now equally attached by interest and religion; and as a Catholic council, who governed Bohemia, treated the Protestants with insolence and injustice, it became necessary for them to concert measures for the vindication of their rights. For this purpose a general assembly of the states was called by the officers appointed to enforce the execution of edicts; but, as no business of importance was agitated at their first meeting, the emperor, by way of crushing disaffection in its infancy, issued orders to prevent their reassembling. The spirit, however, which animated the evangelists—so the Protestants were likewise called—was too strong to be repressed. They met in spite of every attempt to prevent them, entered the castle of Prague,

armed, and propounded their grievances to the council. But, unfortunately, they did not rest here; for, enraged by opposition, they threw Sclabata the chief justice, Smesansius one of the council, and Fabritius the secretary, from a high window into the ditch below (from which, however, owing to the water in the ditch, they sustained little injury), and imprisoned the remainder.

In the relative situation of parties, this was the necessary precursor of war; and though both, according to custom, laboured in proclamations, &c., to justify themselves by appeals to the feelings and understanding, they both prepared vigorously for an appeal to the sword. The evangelists of Bohemia, by far the most numerous party, banished the Jesuits, and were joined by a portion of the Catholics, who resented the violence done to the political privileges of the kingdom. The states, having entrusted the management of their affairs to thirty directors, implored the assistance of the evangelical body, composed of the Protestant princes of the empire, with the exception of the Elector of Saxony, who had reasons for adhering to the emperor—viz., the Elector Palatine or Palsgrave, the Elector of Brandenburg, the Marquis of Ansbach, the Duke of Wirtemberg, the Landgrave of Hesse, the Prince of Anhalt, and the Marquis of Baden—and formed in opposition to a counter one, known by the name of the Catholic League, of whose designs they had too much cause to be jealous. In the beginning of these troubles Matthias died, and Ferdinand was elected to the empire, though not without the charge of similar unfairness to what had been practised in the case of Bohemia. As his election to the latter had been compassed by means which the states were resolved to resist, they deny its validity, and tender their crown to the Palsgrave, whose connections, and particularly his alliance with England, flattered them with the hope of great assistance in their struggle for independence. The moment was critical; the prospect of success considerable (the cause flourished at the begin-

An. 1619.

CHAP.
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ning); and as Frederick might conclude, with much appearance of reason, that James, though, from his excessive timidity, he might not encourage him to accept of the proffered crown, would support him in his throne, he received the kingdom without awaiting the approbation of his father-in-law.

When the news of these events reached England, all ranks were inflamed with generous ardour in the cause of their Protestant brethren, as well as of the daughter and son-in-law of their king, and eagerly desired the interposition of British arms in the war. Nor was their zeal marked with that want of consideration which it has been fashionable for men of letters to impute to the people. Besides the assistance of the Evangelical League, the Bohemians were encouraged with prospects from other quarters. The evangelists of Upper Austria demanded equal privileges with the Catholics, and resolved to join their brethren of Bohemia; while the Protestant states of Moravia, Silesia, Lusatia, and Hungary revolted from the emperor. The Palatine was connected by consanguinity with the King of Denmark. The King of France and the Prince of Orange, then at the head of the united provinces, were prevented by the peculiar situation of their affairs from co-operating with the Palsgrave; but the latter was attached to him by consanguinity, and both were favourable from policy. Lastly, Gabriel Bethlen, commonly called Bethlem Gabor, Vyvad of Transylvania, heartily engaging with the Protestants, had penetrated with his army to the walls of Vienna. The issue of a contest depends upon so many casualties, that it is impossible to predict it; but, judging from probabilities, the English nation had every reason to anticipate a happy result. Spain, whose resources and arms in reality determined the event, might have been awed into neutrality by the recruited strength of the British navy; the intervention of Britain might have confirmed the wavering on one side, and deterred those on the other from interfering;

While such a supply of British troops in the seat of war could easily have been raised, might, in all human probability, have effectually turned the scale. But this, the brightest prospect that English king ever had of earning popularity at home, as well as a character for himself and his people abroad, as the bulwark of civil and religious liberty, was lost by the absurd policy and spiritless conduct of James.

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All men naturally desire the diffusion of their own principles; and when these are believed to be necessary to the temporal or future happiness of the human race, they would cease to deserve the name of men if they did not. But there is a nearer interest, which operates upon a nation who either are exposed to or dread an invasion of their privileges by the executive; for they feel a confidence in maintaining their own rights when the people of other states pursue the same policy. From these motives, the English took an anxious interest in the fate of the foreign Protestants.* But motives of a contrary nature operated on the mind of James. Every indication of civil or religious liberty abroad, appearing to him to encourage similar principles at home, and consequently to shake the stability of those grounds on which he founded his divine right to govern, he felt relief in the ruin of the party abroad who espoused such a cause. One of his darling principles was, that sovereigns should be ready to assist each other in all contests with their subjects;† a principle which Lord Clarendon himself censures foreign sovereigns for not acting upon in relation to the struggle between Charles I. and the parliament, in the next age. The dethronement of Ferdinand by the Bohemians, there-

Spiritless
conduct of
James.

* Sir B. Gerbier, in his *Relation for Clearing some Matters during the Reigns of James and Charles I.*, says of the English people: 'The reformed churches abroad they held as counterescarpments and outworks of the Church of England; and, therefore, as soon as any of them was threatened,

the English took it as a cloud which might in time break upon them' (*Ays. MSS. Brit. Mus. No. 4181*). This is a view which Mr. Hume unfortunately overlooked, but which would have saved him from many errors.

† Howell's *Fam. Let.* p. 67.

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fore, was conceived by James to be an unpardonable crime against the divine right of kings, who, once raised to that station, by whatever means, were, in his opinion, never after liable to be questioned by subjects. But he had other motives for abstaining from giving assistance to the palatine. In any undertaking of importance, his natural timidity and indolence conjured up difficulties and dangers from which he recoiled. The British navy, once the most powerful in Europe, had, through the secret influence of Spain, been permitted to fall into decay, and could only be recruited at considerable expense; his profusion had so drained his coffers, that, without summoning parliaments, and relying upon their support, which for many reasons he was eager to avoid, he was unprepared to act with vigour in the war; and, above all, the step would frustrate a treaty of marriage which he had been long labouring to accomplish between his son and the infanta of Spain—a project as much dreaded by his subjects as fondly cherished by himself.* On these grounds he declared himself dissatisfied with the proceedings of the Bohemians, and disclaimed the act of his son-in-law, whom he refused to recognise under the title of king. But, instead of an army, he dispatched ambassadors, at vast expense, to mediate between the contending parties, on the principle of the Bohemians returning to their obedience under the emperor, and the palgrave's renouncing all pretensions to the crown—a proceeding which excited contempt against himself,† and lowered the cha-

* James had early courted an alliance with France (*Mem. de Sully*, tome iii. p. 274), and not long after with Spain, for Prince Henry (Winwood's *Mem.* vol. ii. p. 160.)

† In Flanders, England was represented as ready to send 100,000 ambassadors to the assistance of the palatinate. James was caricatured in one place with a scabbard without a sword; in another, with a sword which nobody could draw out, though many stood pulling at it. In

Brussels they painted him with his pockets hanging out, without a penny in them, and his purse upside down. In Antwerp they represented the Queen of Bohemia, his daughter, like a poor Irish rambler, with her hair hanging about her ears, with her child at her back, and James carrying the cradle after her (Wilson, p. 749; R. Coke, p. 109; Howel's *Fam. Let.* p. 89; *Somers' State Tracts*).

racter of the nation, while it struck a baleful damp into the allies, and inspirited their enemies.

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Ruin of the
palsgrave.

The fate of the palsgrave may be recounted in a few words. The King of Poland, aiding the emperor in Hungary, obliged Gabriel Bethlen to enter into a truce; the Elector of Saxony, whom interested motives had withheld from joining the Evangelical Union, was induced by these, and fresh hopes, to depart from the neutrality he at first affected, and assist the imperial cause with an army of 15,000 horse and foot, and soon reduced the Protestant states of Austria to the necessity of renouncing the confederacy, and submitting to the emperor. The Duke of Bavaria, head of the Catholic League, likewise won by promises, joined the imperialists; and Spain, which had at the beginning of the troubles prepared vigorous levies in the Low Countries, to assist the common cause of their house, sent a considerable army under Spinola into the field. On the other hand, Frederic was little qualified for the station to which he had been exalted. He had lost the affections of his new subjects by the state and grandeur of his manners. The two leaders, Counts Mansfeld and Thurne, under whose command the allied army had fought with success, were, with an indiscretion in which he at least participated, superseded in the chief command by the Prince of Anhalt, who was neither experienced in war, nor had given the slightest indication of the talents requisite for it; and, above all, Frederic, with a meanness as impolitic as contemptible, permitted his troops to mutiny for want of pay, while he had sufficient treasure in his coffers. It is not our purpose to trace the progress of the war: it is enough to observe, that the elector was put to the ban of the empire; that the palatinate, to which James sent a solitary regiment, as if to insult the cause which it could not materially aid, was overrun by the Spanish army; and that the united army of the Protestants sustained so signal a defeat at Prague, where the conquerors were rewarded

An. 1620.

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with that treasure which, by being withheld from the vanquished, greatly contributed to the event, that Bohemia was reduced, and taught, by frequent executions, to lament the iron yoke under which it had fallen, while Frederic, who is alleged to have stood aloof from the battle, was obliged to flee to and beg an asylum in Holland. After such a reverse, the Protestant cause in Germany seemed in a manner hopeless; but, such were the resources of the Protestant states, and the jealousies of so many principalities who owed a nominal rather than real subjection to the emperor, that the war continued for nearly thirty years, and was terminated at last with concessions to the Protestants. This fact of itself affords the best presumption of correctness in the view taken by the English at the beginning of the struggle.*

Treaty of
marriage
with Spain.

James, whose mind was wholly intent upon the Spanish match, foolishly consoled himself for the ruin of his daughter and her family, by imagining that the Spaniards would restore the palatinate in courtesy, which had been gained with a waste of blood and treasure. The other, perceiving his weakness, protracted the treaty, and amused him with promises, till their views were completed. The negotiation for a marriage had, on the Spanish side, begun in insincerity; but it is not so wonderful that, in the course of it, after great concessions had been made, an alliance with such a prince should have been seriously intended, as that the proposal should ever have met with hesitation. When, however, matters were at last in a fair train, a singular occurrence destroyed the work of many years.

* *Universal History*, fol., vol. xi.; Barre, *Hist. d'Allemagne*, p. 451 *et seq.* tome ix.; Nani, l. iv.; Rushworth, vol. i. p. 5 *et seq.*; Franklin, p. 38 *et seq.*; R. Coke, p. 89 *et seq.* See *Constitution and Government of the Germanic Body*; Hacket's *Life of Williams*, part i. p. 70 *et seq.*; Wilson, p. 720 *et seq.*; Howel's *Fam. Let.* p. 67 *et seq.*

A large body of the Bohemians proposed to emigrate to England, and, as their capital and skill were considerable, much benefit to that country was anticipated in a political view; but the clergy dreaded their nonconforming principles, and they were denied an asylum (Hacket's *Life of Williams*, part i. p. 90).

The treaty had hitherto been conducted by the Earl of Bristol—an individual who, though he owed his original preferment to the handsomeness of his person,* was not destitute of the talents of an ambassador. The anticipated success of his mediation, however, having excited the jealousy of the great favourite, Buckingham (who foresaw in it not only the increased favour of James to one who had rendered him the service he most desired, but the probable confidence of the infant, and consequently of Charles, which might be accompanied with his own removal from the preeminent station he so odiously occupied) induced him to carry the prince to Spain—a course which terminated in a breach of the treaty. But before proceeding to detail these events, it may be proper to give some account of this extraordinary personage.

Ever from the age of fourteen, James had been so much the slave of beauty and fine clothes in his own sex, though more than indifferent to the other—whom, like all weak men, he affected to despise for the inferiority of their understandings—that these alone were an irresistible charm to his utmost favour; and he was always accustomed ‘to clasp some gratioso,’ as Bishop Hacket phrases it, ‘in the embraces of his great love above all others:’ the individual who now filled that station ‘could open the sluice of favour to whom, and shut it against whom, he pleased.’† Buckingham was a younger son, by a second marriage, of Sir George Villiers, of Brooksly, in Leicestershire, whose family, though ancient, had hitherto been unheard of in the kingdom. His mother is reported to have served in his father’s kitchen, but he, being struck with her extraordinary beauty and person, which the meanness of her clothes could not hide, prevailed with Lady Villiers, not without difficulty, to raise her to a higher office; and on the death of that lady he married her servant.‡ The latter, though not much indebted to

History
and character
of
Buckingham.

* Clarendon, vol. ii. p. 201.

† R. Coke, p. 74.

‡ Hacket’s *Life of Williams*, part i. p. 39. See Clarendon, vol. i. p. 8.

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fame for the correctness of her life,* evinced an uncommon discernment in affairs. As the heir by the former marriage succeeded to the family estate, it was the part of Lady Villiers, who obtained the means through a second husband, whom she afterwards deserted,† to accomplish her children for pushing their own fortune in the world; and as George was remarkable both for the beauty of his face and handsomeness of his person, she built her hopes on these natural advantages, and early sent him to France, that, with the language, he might acquire those fashionable accomplishments which add grace to beauty. This was exactly the sphere in which he was calculated to shine; and in due time he returned, to use the vulgar language on such a topic, the finished gentleman. The king, from his immoderate attachment to field sports, spent much of his time at Newmarket; and to that place young Villiers resorted. James, though sworn to administer the common law, embraced every opportunity of expressing contempt, because it limited his prerogative, it being part of his doctrine that ‘the king,’—we use his own words,—‘is to settle the law of God, and his judges to interpret the law of the king.’‡ There was at this time a farce, entitled ‘Ignoramus,’ acted on the stage in ridicule of that system of jurisprudence; and the sapient monarch went to the theatre at once to countenance and be gratified by the exhibition. During the entertainment he espied Buckingham, and the lucky incident made that individual’s fortune; for the king’s heart was then unoccupied, as Somerset, who had so long filled it, had forfeited the place, though not the title, in consequence of a gloom, arising either from remorse for his crimes, or fear of detection, which had pervaded his countenance and infected his manners since the murder of Sir Thomas Overbury. James was smitten at first sight, and those

* Hacket’s *Life of Williams*, part i. p. 171.

† *Id.* p. 171; R. Coke, p. 74.

‡ Sanderson, p. 439.

no expected future rewards for their present advancement of one likely to be absolute in the monarch's affections, laboured to improve his passion. Villiers was introduced to court,* and in a few days promoted to the office of cup-bearer, 'by which he was admitted that conversation and discourse with which that monarch always abounded at his meals.'† His utmost advancement, now determined on, required only the removal of one small obstacle. James had promised the queen to take no favourite without her consent; and, as this must first be obtained, the task of mediation was devolved upon Abbot, Archbishop of Canterbury, whose earnest solicitations ultimately prevailed. She withstood him a long time, however, and, when she yielded at last to importunity, she prophetically warned the dignified relative that he would live to repent his interference, as time would teach the favourite to hate all who had been instrumental in raising him, that he might seem to owe his fortune solely to his master's affections, and thus become more closely attached to him, while Villiers would himself try to remove the sense of obligation by injuring or ruining the man to whom he was indebted—a prophecy whose truth the primate was in no long time doomed to feel.‡ After this, the favourite's ascent was rapid. Somerset, who opposed his rise, was prosecuted for the murder of Sir Thomas Overbury, which otherwise would probably never have been avenged; and, though the king durst not proceed to extremities against the criminal, from a dread of his exposing some secrets which James trembled at the idea of being divulged (Somerset hinted threat in no obscure terms§), he, after conviction, stript

* He was introduced by a cabal of nobility, who wished the overthrow of Somerset (Franklin, p. 30; Bayly's *Audicus Coquin*).

† Clarendon, p. 18; Wilson, p. 8. Those who desire to see a humiliating picture of human nature, may look into Weldon, pp. 63, 64.

‡ See Abbot's *Narrative*, in the first volume of Rushworth.

§ Sir Ant. Weldon says that James was so dreadfully alarmed at the thought of Somerset making a disclosure at his trial, that strict orders were given to hoodwink Somerset, and carry him from the bar

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if he offered to speak (p. 118). The letters of Bacon to the king, &c. prove how terribly the monarch was disquieted, and that every means were taken to soften Somerset by assurances of royal favour, previous to the trial, in order to keep him silent; while, on the other hand, Bacon advised to intermingle with these assurances a threat to have him carried instantly from the bar if he offered to speak, and to proceed with the trial in his absence, when he should be abandoned to his fate. Certain arrangements were also made (Birch's edition of Bacon's Works, vol. iii., regarding the trial of Somerset—State Trials). I forbear to offer any remarks as to the cause. It was by some attributed to his having been accessory to the murder of his own son, Prince Henry, who was on ill terms with his father, and at war with the favourite, and of whose popularity James was so jealous that he is reported to have been heard to exclaim, 'Will he bury me alive?' (Coke's *Detection*, p. 66;) but the idea of Henry's having been poisoned is contradicted by the report of the physicians, whom James directed to open the prince, and who describe no appearances indicative of poison. That report, however, did not satisfy the people, nor even the courtiers and the most enlightened statesmen. So far had the rumour of foul play extended, that Christina of Sweden spoke of it to Whitelocke, inferring that a judgment impended over the house of Stuart (*Whit. Emb. Aysc. MSS. Brit. Mus. No. 4901*, p. 200). Mr. Fox's impression was, that Prince Henry was poisoned (Letter from him to Lord Lauderdale, in the preface to his *Hist.* by Lord Holland).

Others, amongst whom is the ingenious Sir Walter Scott, have attributed James's alarm to a still more flagitious cause. 'The fatal secret,' says the accomplished baronet, 'is

by some supposed to refer to the death of Prince Henry; but yet more flagitious will those who have remarked passages in the *Letters* betwixt king and Buckingham, published by Lord Hailes' (Note in his *Somers' Tracts*, vol. ii. p. 262, also Sir Walter Scott's *Somers' State Tracts*, id. pp. 262 *et seq.*). That criminally reported by Weldon to have James durst not proceed against him. The threat made to James in this occasion was, 'I will say no more of you, neither in that which you have doubted my aptness to fall in, nor in my cause nor confidence is in your distress, as for to use that intercession, or any thing' (*Somers' Tracts*, vol. ii. p. 262). Osborne says that 'Some Buckingham laboured to get women in the effeminacy dress, and exceeded even them in the grossness of their passions' (*Id.* p. 488, note; see Weldon, and R. Coke). James did not refrain from the most and nauseous marks of fondness for his favourites before other courtiers.

Some may not be satisfied with the baronet's solution of the matter regarding James's alarm at Overbury, from the cause of the murder. Overbury, who by principle, acted as pander for James, set in bringing him and the Duke of Essex together; but he felt the consequences to himself of the connection, as he saw that James, the Howards, with whom he was at enmity, would suppose him in the favourite's affection trusting to his influence, and common secrets between them. Somerset, he opposed it vehemently, applied every reproachful epithet to the lady, and threatened to expose it. The various passions of the minion concurring with the

of 4,000*l.* a-year, as a resource against want, to
 convicted of the most deliberate murder, who had

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her relations, induced him
 the king to send Overbury
 an ambassador, while he
 privately encouraged him to
 office, that a pretext might
 or committing him to the
 contumacy. The plot took,
 bury was confined. From
 he wrote: 'You told my
 Lidcote, that unreverend
 ht make you neglect me.
 at face could you do this,
 v you owe me for all the
 rit, and understanding that
 ? Is this the fruit of my
 love to you? Be those the
 common secrets, common

Drive me not to extre-
 st I should say something
 and I may both repent.'
 I, ere it be long, will come
 c trial of another nature;
 rack, you at your ease.
 this vacation I have written
 betwixt you and me. How
 st my friends for your sake;
 ards I have run; what
 ave passed between us.

I live or die, your shame
 er die, but ever remain in
 I to make you the most
 aliving' (*State Trials*, vol.
 ; Bacon's Works, vol. iii.;
Tracts, vol. ii. p. 351, note).

prevent a disclosure that
 who was flattered all the
 was murdered by poison.

main part,' said Bacon, in
 against Somerset, 'which
 ortal malice, coupled with
 was in you to Sir Thomas
 , although you did palliate
 great deal of hypocrisy and
 tion, even to the very end,
 ve it, the root of this hate
 which cost many a man's
 ; is, fear of discovering
 say, of secrets of dangerous
 nature; wherein the course
 ll hold shall be this: I will
 at a breach and malice was
 my lord and Overbury, and

that it burst forth into violent threats
 and menaces on both sides. Se-
 condly, that those secrets were not
 of a light, but of a high nature, I
 will give you the elevation of the
 pole; they were such as my Lord of
 Somerset had made a vow, that
 Overbury should neither live in court
 nor country; that he had likewise
 opened himself so far, that either he
 or himself must die for it. And of
 Overbury's part, he had threatened
 my lord that whether he did live or
 die, my lord's shame should never
 die, but that he would leave him
 the most odious man in the world.'
 And Bacon says farther, 'I will
 show you it was but a toy to say the
 malice was only in respect he spake
 dishonourably of the lady, or for
 doubt of breaking the marriage, for
 that Overbury was coadjutor to that
 love, and the Lord of Somerset was
 as deep in speaking ill of the lady
 as Overbury,' &c. (see Birch's edi-
 tion of Bacon's Works, vol. iii.; see
Somers' Tracts, vol. ii. p. 354). Mr.
 Hume, whose account of all this
 matter is exceedingly partial, tries to
 ridicule Sir Ed. Coke for calling
 Mrs. Turner a witch, as well as a
 bawd, felon, murderer, &c., which
 she undoubtedly was; but she had
 affected to be one, and pretended to
 the countess her ability to gain
 Somerset by spells. He also ridi-
 cules Bacon for calling poisoning a
 Popish trick; but that is not his
 language. He says, 'For impoison-
 ment, I am sorry it should be heard
 of in our kingdom; it is not *nostris*
generis nec sanguinis peccatum; it is
 an Italian comfit for the court of
 Rome, where that person that in-
 toxicateth the kings of the earth is
 many times really intoxicated and
 poisoned himself.' And when we
 reflect on what Bacon witnessed—
 an encouragement to Elizabeth's
 gentlewomen to murder her, &c., the
 gunpowder plot, &c., we cannot con-
 demn him—nay, I would ask whe-

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entered the court a page, without patrimony, a few years before. The spoil of Somerset enriched Villiers, who, in a short time, was created a baron, a viscount, an earl, a marquis, lord high admiral of England, lord warden of the Cinque Ports, and master of the horse; 'and,' says Clarendon, 'entirely disposed of all the graces of the king, in conferring all the honours and all the offices of the three kingdoms, without a rival.' 'Never,' observes the noble historian, 'any man, in any age, nor, I believe, in any country or nation, rose in so short a time to so much greatness of honour, fame, or fortune, upon no other advantage or recommendation than of the beauty or gracefulness of his person.*' It is humiliating to think that this minion's heels were tracked with spaniel-like observance by the chief of the church, and of the nobility,

that all the ideas prevalent in Britain about her own moral purity in regard to assassination and the stiletto of Italy, be a dream? The sufferings of Overbury are said to have been protracted through the portion of grace possessed by the lieutenant of the Tower, who, though he was wicked enough to agree to the horrid deed, had sufficient virtue to wish to prevent it, and therefore prevailed with one of the murderers not to give the poison as it was sent (Weldon, p. 73 *et seq.*). Weldon gives the following account of the last parting between James and Somerset, as a proof of that monarch's dissimulation, or, as James himself called it, *king-craft*: 'The Earl of Somerset never parted from him with more seeming affection than at this time, when he knew Somerset should never see him more; and had you seen that seeming affection (*as the author himself did*), you would rather have believed he was in the rising than setting. The earl when he kissed his hand, the king hung about his neck, slapping his cheeks, saying, "For God's sake when shall I see thee again? On my soul, I shall neither eat nor sleep until you come

again." The earl told him, on Monday (this being on the Friday). "For God's sake let me," said the king; "shall I? shall I?" Then lolled about his neck; then, "For God's sake, give thy lady this kiss for me." In the same manner at the stairs head, at the middle of the stairs, and at the stairs foot. The earl was not in his coach when he used these very words, in the hearing of four servants, of whom one was Somerset's great creature, and of the bedchamber, and who reported it instantly to the author of this history—"I shall never see his face again," (pp. 102, 103). Weldon is called satirical; but the publication of letters by Lord Hardwicke, Hailes, and M'Auley, gives us some reason to think that he fell short of the truth in several respects; and in this, James's conduct is confirmed by his usage of Buckingham, after he had resolved on his destruction, according to Clarendon himself. He wrote the most fulsome letters at that time. The case of Peacham, too (see Hailes's *Col.*), amongst others, affords no room for thinking him inclined to compassion, as Mr. Hume asserts.

* Vol. i. p. 9.

to were content to be called his creatures, professing an attachment bordering on adoration, and submitting to treatment little short of that experienced by the animal whose nature they imitated. The works which expose a court at this time, excite disgust at its meanness and profligacy; and though we should disregard these as caricatures, enough would still remain; for it is impossible to read Heylin's 'Life of Laud,' and Laud's 'Diary,' with his 'Prayers for Buckingham,' Hacket's 'Life of Williams,' some letters in the 'Cabala,' and even some passages in Clarendon, without insuperable loathing. One feels, as it were, transported to an unwholesome region, whose baleful influence has rooted out the honest instincts of our nature, and left abject baseness to usurp the name of virtue. Bishop Hacket excuses the meanness of Williams, by observing that 'this was ever a venial fault at court, where it was usual for men in place to drink down such affronts as would scald their throats, that could not endure the vassalage which was tied to ambition.'* As neither talents nor virtue had raised Villiers, so he had little of either, though more of the first than the last; and as his heart was daily corrupted, so was his judgment perverted, by his situation. His profligacy became extravagant from the unlimited means of indulgence. His natural presumption, rashness, and insolence, threw off control with his sudden, unexpected, and towering greatness, while a sense of insecurity made him fear 'every shadow,' and desperately adventure upon many things for his preservation.† The least national evil arising from his influence was the enriching, at the public expense, of his numerous relations (whose avarice was, like his own, insatiable, and for whom new projects were invented, injurious to the general privileges as well as prosperity). For, as all offices were filled by him, none could expect preferment but such as were willing to show

* *Life of Williams*, part i. p. 171.

† Archbishop Abbot's *Narrative*, in Rushworth, vol. i.

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him the last degree of servility,—the most unlikely to discharge the duty of their appointments with faithfulness or ability; and a restless jealousy of their acquiring popularity, or the confidence of the sovereign, induced him to a frequent change, by suddenly casting down those he had raised.* Unfit men, therefore, were advanced, justice was obstructed, and the national morals exposed to corruption by a profligate example from stations which demanded purity of conduct.

Buckingham's insolence to the prince.

Between the prince and him a jealousy, attended on his part with outrageous insolence, had long subsisted. To such a height of presumption was this minion grown, that he not only used language to Charles, now only to be found in the mouths of the lowest class of the community,† but, to quote the words of the best authority in this instance, Clarendon, ‘was once very near striking

Courts and gains the prince's confidence.

him.’‡ As the humility or weakness which, by depressing one in his own opinion, prepares him to submit to insolence, formed no part of the prince's character, it was naturally to have been supposed that a terrible day of reckoning awaited the favourite; but, to the general astonishment, Buckingham no sooner stooped to court his highness, than he acquired over him the most uncontrolled ascendancy. Having gained his confidence, he instantly applied himself to the immediate object for which it had been sought. He represented, in glowing colours, the unhappiness of princes who, in a matter which substantially involves their happiness for life, are seldom left to their own discretion, but married, from reasons of state, to ladies they had never seen, and of whose beauty, disposition, and accomplishments they rarely receive a disinterested account; and how gallant and brave a thing it would be to make himself a journey to Spain to fetch

Advises the prince to make a journey to Spain.

* Archbishop Abbot's *Narrative*, in Rushworth, vol. i.; Hacket's *Life of Williams*, part i. p. 40, and part ii. p. 19.

† Weldon, p. 152.

‡ Clarendon, vol. i. p. 25 (see relative to Buckingham's mother having given offence to Charles, &c., Ellis's *Col. of Orig. Let.* vol. iii. p. 129).

home his bride. That a feat so extraordinarily gallant, besides at once putting a period to tedious formalities, would inspire the infanta with the utmost admiration and love, while his presence would gain at once from the Spanish king the restoration of the palatinate, almost the only point of importance in the treaty on which parties had not come to a final arrangement. The representation was not lost on unwilling ears. The prince was transported with the idea, and most impatiently solicitous for the journey.

The only difficulty that now remained was to obtain the king's consent; and as James's timorous nature always started at imaginary danger, it was not to have been expected that he would readily consent to a step so full of hazard; but Buckingham's address surmounted the obstacle. It was determined on that Charles should inform his majesty that he had an earnest suit to make, which, as it depended entirely on his pleasure, he should solemnly promise not to reveal to anyone till he had returned his answer. James unsuspectingly made the promise, and Charles, falling on his knees, declared his suit, and importunately pressed it. The king heard it with less passion than was expected, and looked to Buckingham, who stood in silence, for his opinion. The favourite avoided all observations upon the prudence of such a measure, but enlarged on the infinite obligation his majesty's consent would confer upon the prince, whose heart was so set on the journey that a refusal would deeply affect his spirits, as the greatest calamity that could befall him. Perceiving the temper with which the favourite's speech had been received, Charles took occasion to expatiate upon the consequences of his presence in immediately accomplishing the marriage, the first object of James's wish, and then procuring the restoration of the palatinate, which was, in the next place, nearest the monarch's heart. Thus importuned, James granted his consent, either not, upon the instant, reflecting on all the consequences of so

Address
with which
the king's
consent
was ob-
tained.

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rash an undertaking, or imagining that the provisions necessary for such a journey, both as to expense and security, would not only require time, but become public, when new measures could be taken. But as they had foreseen this, so they had provided against it ; and, therefore, having obtained the royal promise in the main, they told him that the object and security of the design depended on expedition, without which secrecy was impossible ; that, if it were deferred till such a fleet and equipage were prepared as became the prince, so much time would be lost as would defeat the very end of the journey ; that, if a pass were demanded of France, the same delay would arise, and that, considering the mysteries and intrigues of state, a pass could not even be relied on ; that, to remove all these difficulties, they had provided an expedient, which was to depart privately, with only two confidential servants ; and as they had never communicated their purpose as yet to any living soul but his majesty, they might easily travel through France before they were missed from Whitehall. The plan appeared feasible, and James consented ; but the nomination of servants and other matters were deferred till the following day.

When James had leisure to reflect upon this hazardous expedition, all the dangers and consequences of it presented themselves to his mind, and plunged him into the utmost distress. When, therefore, the prince and Buckingham went to him next day for the despatch, he burst into a violent agony of passion, imploring them, with tears, to lay aside a resolution which would break his heart—as that, besides the dangers to which the prince's person was exposed, the loss of the people's affections would attend his consent to so rash an expedition ; and, instead of promoting the treaty by their presence, they would undo what, with such labour, had been already effected, as the Spaniard would take advantage of having the prince in his power to advance his terms, while the clergy, whose

fluence was great, would not omit the opportunity to
as matters in regard to religion, which, though he
ver could consent to them, would create delay that
ght altogether frustrate the treaty. To Buckingham he
resented the probable ruin to himself from such an
venture, as advantage would be taken of his absence,
l such a flame kindled throughout the nation that it
ght not be in his majesty's power to protect him.
nes concluded with the same disorder and passion with
ich he began, conjuring them, with sighs and tears, to
op a project which would break his heart. Neither
arles nor the favourite took the trouble to answer the
ig's arguments. The first reminded him of his promise,
ich he hoped was too sacred for him to violate, and
ured him that if he did, he would never think of mar-
ge more. The favourite, 'who,' says Clarendon, 'better
ew what kind of arguments were of prevalence with
n, treated him more rudely; told him nobody could
lieve anything he said when he retracted so soon the
omise he had so solemnly made; that he plainly dis-
med that it proceeded from another breach of his word,
communicating with some rascal who had furnished
n with those pitiful reasons he had alleged, and he
ubted not but he should hereafter know who his coun-
lor had been;' and that 'if his majesty retracted his
omise, the prince would never forget the injury, nor
give the man who had advised it.' James passionately,
d with many oaths, denied having disclosed the matter
any person whatever, and dropped his opposition.
ey then proposed to set off within two days, in which
ey hoped to have all things in readiness, and mentioned
it, to prevent the journey from being known, his high-
ss intended to give out that he had gone to Theobald's
hunt, and the favourite that he had retired to Chelsea
take physic. For servants they proposed Sir Francis
ttington and Endymion Porter, both well known to the
ig, and approved of by him, the first having been long

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his majesty's agent at the Spanish court. The prince and favourite were anxious that the affair should not be disclosed to their attendants till they were ready to embark; but James, alleging that Cottington, who waited in the outer room, might suggest many things for the journey which had not occurred to them, sent for him instantly. No sooner did James take this step, than Buckingham whispered to the prince that Cottington would be against the journey; but Charles answered that he durst not.

The king, having told Cottington that, as he had always been an honest man, he would trust him with an affair of the last moment, which he must not communicate to any man alive, said, 'Here is Baby Charles and Stenny* (an appellation he always used of and towards the duke), who have a great mind to go by post into Spain, to fetch home the infanta, and will have but two more in their company, and have chosen you for one. What think you of the journey?' Cottington often protested afterwards, that when his majesty had spoken thus, he fell into such a trembling that he could hardly speak; but, being commanded to give an answer, he expressed an opinion similar to that which had been previously entertained by the monarch himself. Upon which the king threw himself upon his bed, and said, 'I told you this before,' and fell into new passion and lamentation that he

* Steeny, or Stenny, was the diminutive of St. Stephen, between whom and Buckingham a similarity, it might be imagined, could not have easily been discovered; but James found one. St. Stephen is generally painted with a glory about his face, and Villiers's beauty immediately suggested the likeness (Ken. vol. ii. p. 697).

It appears by a letter in the British Museum, and correspondence published, that Buckingham always went by the name, and called himself the dog, in writing to, or con-

versing with, James; and that James himself passed by the name of the sow. To soothe his melancholy at the slow progress of the Spanish match, Stenny got a pig dressed like a child, one of his creatures as a bishop, &c., and proceeded to baptise it (the individual who personated the bishop read the service); but James, however fond of a profane jest, was not in the humour, and gravely ordered them to have done with such profanity (Wilson, p. 700; Whitelocke's *Mems.* to the death of James I. p. 304).

was undone, and should lose Baby Charles. The prince and Buckingham were enraged, and the latter, having told Cottington that he merely objected because his pride was hurt at not having been at first consulted, reproached him with all imaginable bitterness, for that he had merely been asked his opinion about the best mode of travelling, of which he was a competent judge, having ridden it post so often, and yet he had presumed to give advice upon a matter of state, and against his master,—conduct which he should repent as long as he lived. He concluded with a thousand new reproaches, ‘which put the poor king into a new agony, on behalf of a servant who, he foresaw, would suffer for answering him honestly.’ ‘Nay, by God, Stenny,’ said he, with some commotion, ‘you are very much to blame to use him so. He answered me directly to the question I put to him, and yet you know he said no more than I told you before he was called in.’ However, the result of all this passion was, that the king was obliged to renew his consent, and directions were given to Cottington about the journey. But James had penetration enough to perceive that the author of the whole intrigue was Buckingham, and it is alleged by the best authority that he never forgave it.* Surely the whole of this transaction, which we have taken from Clarendon, proves that James, who insulted the people by pretending to be above the control of their laws, crouched to the creature he had made, in a manner which, to the people at large, would have appeared insupportable thralldom. But Buckingham was not always rough. The most profane flattery was employed by him on other occasions to soothe his master’s vanity.

The prince and Buckingham travelled incognito, and reached Madrid without an accident. Great was the surprise of all men there on the arrival of such an illustrious guest. But Bristol, who, in all likelihood, dived

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* I take this from Clarendon, vol. i. p. 20 *et seq.*, and all the quotations are from him.

The prince and Buckingham travel incognito to Spain. Their reception there, &c.

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into the secret motives of the journey, and who foresaw the consequences, both as it testified too great an eagerness for the match, and afforded the Spaniard such an advantage over the prince as would induce him to rise in his demands, was deeply mortified. His highness was treated with the respect due to his rank, and to the extraordinary confidence reposed in Spanish honour; but, as the king had predicted, and Bristol foresaw, the journey, instead of forwarding, obstructed the treaty—instead of softening the terms, rendered them more rigorous. Yet, as the prince was disposed to make concessions, particularly in regard to religion, which could not have been fulfilled without a ferment at home (he not only, too, wrote an extraordinary letter to the pope in answer to one from his holiness, intended to seduce him into the bosom of the Catholic church,* but advised his father, by a letter still extant, to acknowledge the papal supremacy†), this long protracted negotiation might have been closed at last to the satisfaction of the English monarch, had it not been for the spleen and rankling jealousy of Buckingham. The pride and cold reserve which marked the manners of Charles, though they contributed in no small degree to the spirit of hostility which afterwards pursued him, according with the habits of the Peninsula, procured

* The answer by Charles has been called a piece of politeness; but Clarendon entertained a very different opinion of it, who, in a private letter, declares it 'more than compliment.' He passed it over in silence in his *History* (Clarendon's *State Papers*, vol. ii. p. 337). That the reader may judge for himself, we present the pope's letter and the prince's answer, in the Appendix.

† The letter alluded to was in the joint names of Charles and Buckingham, and contains this passage: 'We make this collection of that the pope will be very loth to grant a dispensation, which, if he will not do, then we would gladly have your

directions how far we may engage you in the acknowledgment of the pope's special power; for we almost find, if you will be contented to acknowledge the pope chief head under Christ, that the match will be made without him' (Hardwicke's *Collect.* vol. i. p. 402). James sent Mawe and Wren as chaplains, because they would go as far as could lawfully be done, it being the king's 'way to go with the church of Rome *usque ad aras*' (p. 406); but he objected to own the pope's supremacy (see correspondence in that collection of *State Papers*; Articles agreed upon, in Rush. vol. i. p. 86).

him the reverence of that people as much as his romantic confidence in their honour excited their esteem. But the French garb, levity, profligacy, and violent temper of the favourite, together with his gross familiarity with his master—a thing monstrous in their eye—provoked very opposite feelings. Some jealousy, too, arose between him and the Spanish favourite, Conde Olivarez, each expecting from the other a portion of that deference which they were respectively accustomed to receive from the rest of mankind; and the latter, whose resentment would quicken his sense of propriety as regarded Buckingham's familiarity with the prince, was heard to remark, that 'if the infanta did not, as soon as she was married, suppress that license, she would herself quickly undergo the mischief of it.*' This having been reported to the English favourite—for his eavesdroppers were ever ready to run with a tale—first alarmed him; and as it was, according to custom, echoed with improvement by the other ministers, amongst whom it was said that 'they would rather put the infanta into a well than into his hands,' and every day's experience convinced him of the little esteem in which he was held, the circumstance, along with his intelligence from England, accounts for the catastrophe.

The English monarch, though he dissembled his resentment towards his favourite for the expedition, and, besides writing the most fulsome letters, created him a duke during his residence in Spain, in reality never forgot it,† and the change in his affections did not escape the keen and watchful eyes of the courtiers, whose function it was to search his inmost thoughts, and wear the livery of his present humour. Though they had been all indebted to the duke for their advancement, and expressed unlimited devotion to his service, the discovery occasioned intrigues. One party, presuming that he was now on

The resentment of James towards Buckingham for the expedition, and intrigues at court.

* Clar. vol. i. p. 36.

† Rush. vol. i. p. 102 (see a description of Buckingham's insolent carriage and familiarity with Charles

—whose cold manner froze others—during their stay in the Peninsula, in the *Cubala*, p. 270).

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the decline, were willing to assist his descent, that themselves might rise upon his ruin. The other, who supposed that the cloud upon the king's affections might be dissipated by the first appearance of the favourite, and probably looked forward to the succeeding reign, built their hopes on the continuance of his power, and eagerly counterplotted the opposite faction, whom they were anxious to crush as rivals in the road to preferment. The most indefatigable of his supporters, and most punctual of his correspondents, was Laud, whose eye, ever directed to preferment, perceived an opening prospect in the opportunity now offered of earning his patron's favour by unwearied industry in his cause, as well as of removing a hated rival in the person of a former friend.* And it must be confessed, that if this rival, Williams, lord keeper and Bishop of Lincoln, were guilty of defection from his patron, which there is reason to suspect, he experienced in the perfidy and restless enmity of Laud the proper reward of his own treachery. From Laud and others, Buckingham received frequent, and probably exaggerated, intelligence of the intrigues of his creatures in the court at home—intelligence which could not fail to alarm one whose hectic jealousy, as displayed even in the journey to the Peninsula, proved how sensible he was of the many fatal accidents to which his sudden, unmerited, and towering grandeur was exposed. To the popular odium entertained against him he was no stranger; and he knew that the marriage would raise such a torrent of public hostility, for which his administration had opened legitimate channels, as nothing but the royal power could stem. But if there were truth in the conjectures of his enemies, and if their schemes succeeded, he was inevitably undone. Supposing, however, that their malice had been fed with unsubstantial hope, he derived from the marriage another source of dis-

* See Heylin's *Life of Laud*, about his activity in corresponding with, and conveying intelligence to, his patron (pp. 106, 113).

quietude. The enmity of the Spanish court was certain, and the infanta had doubtless been infected with its breath. If, therefore, she gained the affection of the romantic Charles, and were agreeable to the doting James, her influence, backed with that of the court from whence she came, would be directed towards rooting from the king's heart a presumptuous favourite, whose conduct was equally marked with profligacy of morals and the absence of respect for his superiors. Should all this, however, not prevail, but the memory of what he was, preserve him during this reign, he was, at all events, left naked to his enemies the instant Charles mounted the throne—an event that, considering the age and bodily infirmities of James, could not be deemed remote. On the other hand, popularity in England attended a breach of the treaty, his present unlimited sway over the prince was unexposed to subversion by the infanta, and any loss of the king's favour might be repaired at leisure, when no foreign enemies crossed his counsels, and his English ones were banished the royal ear; or, should his hope of recovering the king be vain, the tide of popularity, with the prince's favour, would rescue him from destruction now, and the latter would recompense hereafter any temporary disgrace. To these motives for an immediate rupture, incalculably stronger than those which had occasioned so rash a journey, was added a painful and rankling sense of the disgust that his conduct had excited, which, doubtless, operated upon a temper naturally haughty and violent as his, and spoiled with unexampled indulgence.*

Having determined on a rupture, his first object was to procure the cordial support of the prince, in which he would appear to have succeeded without a struggle. Taking advantage of the delays in completing the match, he infused a jealousy of the intentions of the Spanish court, and inflamed Charles with the idea of ill-treatment,

* Rushworth, vol. i.; Clar. vol. i.; *Life of Williams*, part i.; Coke's *Heylin's Life of Laud*; Hacket's *Detection*.

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of which he had small reason to complain, till the prince was, from motives of resentment, as deeply fired with an ardour for a breach and a war, as Buckingham from such a complication of causes. But, though they had formed their plans, they parted from Madrid with every demonstration of the most cordial attachment, except that the favourite, while he expressed to Olivarez his high sense of gratitude to the court for their kindness, intimated strong dislike to himself. As, however, the prince and duke were resolved on a breach, they easily afterwards invented a pretext.*

The prince
and Buck-
ingham re-
turn, and a
parliament
is called.
1623.

The air rang with acclamations on the prince's arrival in England, and the news of his displeasure with Spain—a circumstance which ought to have endeared so affectionate a people for life.† But James heard with horror of the intended breach of the treaty, which had been so many years protracted, and was at last nearly brought to the conclusion he so eagerly desired. To prevent his passion for the marriage from defeating their purpose, a parliament, formerly dreaded by the favourite, was now proposed, that, supported with its authority, they might constrain the unwilling king to concur in their views. To that assembly, not only Buckingham and even Charles, but the monarch himself, displayed a degree of duplicity which it is impossible to excuse. James, though harbouring black resentment towards the duke on account of the journey, and the alienation of his son from the match, was lavish of encomiums for that very service, declaring that it had been performed according to his commands. The prince and Buckingham, on the other

* For an account of the expedition to Spain, and all occurrences on that subject, see Rushworth, vol. i. from p. 76 to 113, p. 249 *et seq.*; Hacket's *Life of Wilkams*, part i. p. 115 *et seq.*; Heylin's *Life of Laud*, p. 101 *et seq.*; Wilson, 763 *et seq.*; Somers' *Tracts*, vol. ii. p. 524 *et seq.*; Sanderson's *James I.*, p. 542 *et seq.*; Pa-

pers relative to the Spanish match, in Hardwicke's *Collection*, vol. i. p. 390 *et seq.*; Clarendon, vol. i. p. 90 *et seq.* and 63 *et seq.*; Howell's *Fam. Let.* p. 116 *et seq.*; Coke's *Dejection*, p. 108 *et seq.*; Ellis's *Col. of Original Letters*, vol. iii. p. 120 *et seq.*
† Rushworth, vol. i. p. 104; Ellis's *Let.* vol. iii. p. 159.

and, concurred in a story destitute of truth, in order to win the assistance of parliament to measures in opposition to the king. Yet, because parliament, confiding in the integrity of the king, and particularly of Charles, approved of the duke's conduct, upon his own statement, avouched by the prince, succeeding assemblies have been severely censured for recalling confidence so grossly abused. And this censure has been passed by historians who admit the imposition by which the parliament was induced to approve of the favourite's management of the Spanish affair.*

The duke's extraordinary narrative sharpened the resentment of the king, who knew its untruth, and was unprepared for the statement. In conjunction with another circumstance, therefore, it raised his displeasure to such a height, that, says Clarendon, 'he wanted only a resolute and brisk councillor to assist him in destroying the duke; and such a one he promised himself in the arrival of the Earl of Bristol, whom he expected every day.'† The other circumstance alluded to, which offended James, was the ruin of Lionel Cranfield, Earl of Middlesex, by exposing him to parliamentary impeachment. This person had been bred in the city; but having had an opportunity of worming himself into the confidence of the favourite, as a man of great knowledge of mercantile business, and having married one of his relations, whom the duke ever patronised, he had been promoted to the station of privy councillor, master of the wardrobe, master of the wards, and subsequently, without parting with these, to the office of lord treasurer of England, and the rank of Earl of Middlesex. The absolute dependence which he had been accustomed to express to the favourite, he began to withdraw during the other's absence in the Peninsula; for, reckoning upon the king's displeasure on account of the journey, and the

The king's
resentment
of Buck-
ingham's
conduct.

* Clarendon does this (see vol. i. p. 33 *et seq.* with p. 6 *et seq.*).

† Clarendon, vol. i. p. 38 *et seq.*

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extraordinary favour then shown to himself, he entertained the hope of standing without the other's assistance, and probably supplanting him in the royal grace. This the duke dreaded, and the offence could, therefore, only be atoned by the ruin of an individual whose treachery to his benefactor leaves no room to lament his fall. James endeavoured to protect Middlesex, but his anxiety on that head could not fail farther to alarm the favourite, whose influence at this time in parliament enabled him to act against the inclination of his master; and as the sudden rise of Middlesex had excited powerful enemies, while his administration afforded the ground of impeachment, his ruin was easily accomplished. When his majesty had ineffectually tried to soften the duke's passion against that individual, he said, in great choler, 'By God, Stenny, you are a fool, and will shortly repent this folly, and will find that, in this fit of popularity, you are making a rod with which you will be scourged yourself.' Then turning to the prince, who, in this as in every instance, appears to have been a mere instrument in the hands of Buckingham, he remarked that 'he would live to have his bellyfull of parliaments,* and that when he should be dead, he would have much cause to remember how much he had contributed to the weakening of the Crown by this precedent he was now so fond of'—meaning the attempt to engage parliament in a war, and this prosecution.†

The supply granted by parliament on the condition of the treaties with Spain being broken off, &c. 1624.

Though the favourite—for he still retained that character—had resolved on a war with Spain, the ostensible object was the recovery of the palatinate, and hostilities with Spain were only contemplated by parliament in so far as that branch of the house of Austria was expected to assist the others in retaining that territory. No war with Spain was proclaimed; and when, afterwards,

* Altered from 'parliaments' into 'parliament impeachments' by the original editors (III. i. p. 3). the original had been altered, though not in sense; Rushworth, vol. i. p. 115 *et seq.*

† Clarendon, vol. i. p. 41 (see how

unsfeld obtained the command of 12,000 English troops for the service of the palatinate, he was specially instructed not to offer the slightest injury to the Spanish interest.* To assist in the recovery of the palatinate, three subsidies, and three fifteenths, estimated at 300,000*l.*, were voted; and four entire subsidies, amounting to about 80,000*l.* more, were granted by the clergy†—a sum remarkably diminutive, if estimated by the standard of modern times, or even by the boundless prodigality of the king, who could squander larger sums upon individual favourites; but which assumes a different light when we consider that the sum demanded by James for the war was only 900,000*l.*, and that afterwards the whole continental operations, which were to be conducted on a large scale, were calculated to require no more than 100,000*l.* per annum. The supply was granted upon the condition of the Spanish treaties being dissolved, and upon another which, though common at a former period in English history, had in later times become unusual: that of the money being expended by parliamentary commissioners upon the business for which it was wanted. But in the last condition they were disappointed, while their hopes in the expedition itself were frustrated; a fine army having, through ill-concerted measures, been led to destruction.†

In order to raise money, and to gain popularity, Buckingham had listened to a proposal by one Preston, remarkably opposite to the ruling principles both of his and the succeeding reign—to make a new invasion of church property, by destroying cathedral and collegiate churches, and confiscating their property. The plan was feasible, as it promised not only a large supply of treasure, and the thanks of a great party, but the means of purchasing adherents by a judicious distribution of the property. But from this attempt the favourite was

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The ruin
of the army
raised.

A project
entertained
for raising
money.

Clarendon, vol. i. p. 154. † *Old Parl. Hist.* vol. vi. p. 333; 4 *Inst.* p. 33.

‡ Rushworth, vol. i. p. 152 *et seq.*

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The jealousy infused into James of his son and favourite by the Spanish ambassador.

dissuaded by Williams;* and, like men who have no steady principle of action, he immediately led, or quickly followed, his young master into the opposite extreme—to which, perhaps, the revolt of his mother, to whom he paid great deference, from her early faith to the Romish church,† might be no small inducement.

The Spanish ambassador, who had, as the representative of his master, such cause of dissatisfaction, accused Buckingham to the king, and even spared not Charles himself; and having procured a secret interview, he put a paper into James's hand, in which it was stated that, being besieged and encompassed by the duke's servants and dependents, so that none could be admitted without their consent, nor heard but in their hearing, he was in reality as much a prisoner in his own palace as King John of France had been in England, or Francis I in Madrid; that he had been brought into contempt with the people, and it was intended by the prince and duke, in conjunction with a cabal of the popular nobility, who had lately been reconciled to the favourite, to deprive him of the regal power, and confine him to one of his country-houses; and that his only safety lay in an immediate dissolution of the parliament, and other vigorous measures.‡ The intelligence had the desired effect upon a mind naturally timid, and which had sunk under the overwhelming influence of the favourite, whose destruction he had determined on; he became melancholy, mused much in silence, and 'entertained the prince and duke with mystical and broken speeches.' He then suddenly resolved to set off to Windsor, and found a trifling excuse for leaving Buckingham behind, who had prepared to accompany him, and then with tears besought him to reveal the cause of his displeasure. James refused to disclose the cause, but pronounced himself 'the un-

* Hacket's *Life of Williams*, part i. p. 204.

† *Id.* p. 171.

‡ Rushworth, vol. i. p. 144; Hacket's *Life of Williams*, part i. p. 195 *et seq.*

appiest man alive, to be forsaken of them that were dearest to him.* The lord keeper, Williams, who declared himself 'panged like a woman in travail'† till he should know the truth, and who spared not for cost, says Hacket, 'to purchase the most certain intelligence of those that were his paid pensioners, of every hour's occurrence at court, and was wont to say that no man could be a statesman without a great deal of money,' made some discovery, and immediately 'sought out the duke at Wallingford House, and had much ado to be admitted to him in his sad retirement: whom he found laid upon a couch, in that unmoveable posture that he would neither rise nor speak, though he was invited to it twice or thrice by courteous questions. The lord keeper gave his grace the faith of a deep protestation, that he came purposely to prevent more harm, and to bring him out of that sorrow into the light of the king's favour: that he verily believed God's directing hand was in it, to stir up his grace to advance him to those honours which he possessed, to do him service at this pinch of extremity.‡ He besought his grace to make haste to Windsor, and to show himself to his majesty before supper was ended; to report himself with all amiable addresses; not to stir from his person night nor day. For the danger was, that some would thrust themselves in, to push on his majesty to break utterly with the parliament; and the next degree of their hope was, upon that dissolution, to see his grace committed to the Tower, and then God knows what would follow.'§ Williams afterwards

* Hacket's *Life of Williams*, part i. 197.

† *Ib.*

‡ Ministers of religion who talk thus are the very men who bring, not only the cloth, but religion itself, into contempt of which they are always ready to complain. Such immorality is well exposed by Vanburgh in the *Relapse* (a play of great merit as to the genius of the author, but of

detestable morality). Bull, the chaplain, says to Lord Foppington, 'Alas! my lord, I have no worldly ends, I speak truth, Heaven knows.' Lord Foppington: 'Nay, pr'ythee, never engage Heaven in the matter, for by all I can see, 'tis like to prove a business for the devil.'

§ Hacket's *Life of Williams*, part i. p. 197.

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Death of
James,
March 27,
1625.

learned the whole particulars by bribing, through his emissaries (for he never saw her), the Spanish ambassador's mistress, whom the ambassador had been weak enough to entrust with affairs of state; and, having communicated the matter to the prince and duke, they adopted measures for reconciling the king. James affected to be satisfied;* but it was far otherwise. He still impatiently expected the arrival of Bristol, with whose assistance he might ruin the duke; and as the latter dreaded the meeting, he exerted his influence to have Bristol committed to the Tower, and afterwards restrained the royal presence.† But, though a temporary popularity, with other circumstances, empowered the favourite to overrule the king, this could not have continued much longer, when the death of that monarch eased the duke's apprehensions. From the violence of the minion's passions, and profligacy of his morals, joined with the strong interest he now had in removing his master, who was surrounded with his relations and creatures, and the not unfrequent occurrence of assassination in that age, his conduct, at the last illness of the king, excited a strong suspicion of foul play. James was afflicted with the ague, and Buckingham, assuming the province of physician, applied remedies, in spite of the remonstrances of the medical attendants, which were attended with extraordinary effects. But the following passage, taken from the manuscript copy of Whitelocke's Relation of his Embassy to Sweden—a passage which the editor has thought proper to omit—may not be unacceptable to the reader. At one of his private audiences with Christina (she had much pleasure in conversing confidentially with this able man about affairs in general, and particularly about those of England, which she had

* Hacket's *Life of Williams*, part i. p. 197 *et seq.* James's dissimulation was extreme (see *Letters* published by Lord Hailes, and one of a strange nature by Macaulay, vol. i. p. 233).

† See (in Ellis's *Lett.* vol. iii. p. 167, a letter from Charles to Buckingham, exhibiting his rancorous feelings towards Bristol).

derful knowledge of), she 'fell into a discourse
ning King James, and asked what testimony there
f his being poisoned, as many have affirmed.
locke told her that, in the beginning of the reign
late King Charles, that business was under exa-
on in parliament, whereof Whitelocke was then a
er; that the doctors who attended King James in
ickness did testify that, contrary to their order, a
r and a drink with powder was given to him by
ountess of Buckingham, the duke's mother' (the
ons charged the duke with having given it with
n hand; but the discrepancy is immaterial); 'that
k it by the persuasion of the duke and of his
r; that the disease being a violent fever, the plaister
f an infective quality, and turned the heat in-
r; that the king took them twice, and fell into
fits after it, and cried out, "That which George
given me hath killed me;" that his body swelled
much. The queen said, "Then certainly he was
ed?" Whitelocke said that many believed it; but
ere was any ill intention in giving him the drink
laister was not made to appear.* This able

Whitelocke's *Embassy*, *Asy. Brit.*
. 4991, p. 206. Why does
or omit all this, and make
narrator say that 'he declined
nurse, and to speak reproach-
he dead' (Printed *Journ.* v. i.
' Whitelocke gave a par-
ccount of Buckingham, be-
hose family and his children
s a near alliance (*Ib.*). The
mplimented him highly upon
ining from all reproach to-
e absent or dead. This sub-
necessarily be resumed after-
when we detail the parlia-
proceedings against the duke.
says that Somerset had told
whom he had it, that he
st) was secretly sent for by
little before his death, in
take that criminal again into
nd that Somerset believed

the secret was not well kept, and had
influenced Buckingham to destroy
his master. But it is scarcely credi-
ble that James should have been so
lost to all sense of decency as to bring
this convicted felon forward again,
though Somerset might boast of it.
Another fact told by the bishop is
more material—that his mother's
brother, Dr. Craig, was disgraced for
saying the king was poisoned (*Hist.*
of his Own Times, vol. i.). The duke's
mother is said to have dealt much
with mountebanks, and 'her fame
had no great savour' (Wilson,
p. 790). Without giving any opinion
on the point, we may observe, in order
to remove the ridicule which may
arise in regard to the plaister, that
if we may credit the highest au-
thority upon this point, there are
several poisons which operate fatally

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Accession
of Charles,
and senti-
ments of
the people.

statesman and ambassador did not keep a diary of his embassy with any view to publication, and he declares that he was careful not to speak reproachfully of any one, not even of an enemy, regarding whom the queen made enquiries.

The spirit of liberty had risen during the reign of James, as well by the injudicious attempts to restrain it, as by the natural progress of society; and Charles ascended the throne when the people were still more disposed to assert their rights than at the accession of his father; yet, as they anticipated a better system under him, and were attached to his person, he succeeded with the fair prospect of governing with their love. The prejudice in favour of a young prince had been, in his case, greatly confirmed by circumstances that seemed to deserve it. Though his misfortunes, and the effects produced by the supposed authenticity of the 'Eikon Basilike,' had led writers into an erroneous idea of the extreme purity of his private conduct, his morals were not stained to any great degree with the irregularities incident to youth in his high sphere.* The reserved gravity of his deportment, though it afterwards raised up great enemies against him, presented so suitable a contrast to the loquacity of his

by external application, such as prussic acid, &c. (see Orfila *On Poisons*, and Male *On Juridical Medicine*, 2nd ed.). But the posset is the most important feature of this case (see this point confirmed by a cotemporary letter from Mr. Jos. Mead to Sir Martin Stuteville, 9th April 1625; Ellis's *Letters*, vol. iii. p. 182).

* 'Castimoniam tu ejus continentiam laudes,' says Milton, in his *Defence of the English People against Salmatius*; 'quem cum Duce Burchingamio flagitiis omnibus co-operum novimus? Secretiora ejus et recessus perscrutari quid attinet, qui in theatro medias mulieres petulanter amplecti, et suaviari, qui virginum et matronarum papillas, ne dicam cætera, pertractare in propatulo, con-

sueverat?' Surely it will not be believed that the great Milton either could or durst invent all this when detection was so simple (*Pro Pop. Ang. Def. C. 4*; Symmons' *Ed.* vol. v. p. 106). Should that great man's veracity be doubted, however, we have other and altogether unquestionable authority upon the subject. Lord Spencer writes thus to his wife, a daughter of the Earl of Leicester, from the camp at Shrewsbury, for he joined Charles whenever he took up arms: 'I never saw the king look better; he is very chearfull, and by the bawdy discourse I thought I had been in the drawing-room' (*Memoirs of the Sidneys*, vol. ii. p. 688). Chaste discourse became a prince who went out to fight for religion.

father, as well as to the disgusting familiarity shown by that monarch to his favourites, that, at first, people augured favourably of so opposite a disposition. Indeed it is probable that his pride increased with his years. Educated in England, he was regarded with the usual predilection for a native who succeeds a foreigner, while the Scots fondly cherished the remembrance of his birth and extraction. But it was his misfortune to poison the springs of affection and confidence on his very entrance into public life. The popularity redounding to him and Buckingham from the breach of the Spanish treaties could not outlive the discovery of the truth, and Bristol was now at hand to contradict their statement, and establish his own. In the case of Buckingham, the public sentiment had suffered violence in being suddenly converted from habitual hatred and scorn into something like esteem; and proportionally strong was the reflux, when it was discovered by what hollow means a momentary popularity had been obtained. A contradiction to a rooted opinion is ever received with difficulty, and when it is perceived by what false means the mind has been seduced from its former conviction, displeasure against the object is augmented by the implied insult to the understanding, and by shame at having been imposed upon—which vents itself upon the impostor. Other causes of dissatisfaction were added; disappointment in the expedition for the relief of the palatinate, waste of the public treasure, together with the part he acted in bringing about a marriage with Henrietta Maria, a daughter of Henry IV. of France. But as Charles had concurred in the favourite's relation of Spanish affairs, and had eagerly adopted that minion's views in all national matters, he necessarily shared the odium; nor could he complain with justice of the bitter fruits of his own misconduct, in permitting himself to be led by a vicious servant, and departing from truth to assist that servant in an imposition on the kingdom. It is true that he was, in all probability, to a certain extent, himself

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deceived in regard to the sentiments and intention of the Spanish court ; but when he was unequivocally detected in misrepresentation, men were not apt scrupulously to enquire into the absolute extent of his insincerity ; and as he sought, with unaccountable eagerness, to identify his interest with the favourite's, he prevented them from measuring the respective guilt of each. Confidence in his candour was thus shaken, and, by admitting Buckingham into an admired intimacy and dearness—to use the language of the times—he proclaimed a purpose of governing by the same maxims as his predecessor, and therefore succeeded no less to the discontent and jealousy that had accompanied the last monarch than to the throne ; thus blasting at once all the fond anticipations that an affectionate people were disposed to foster. To these causes of jealousy and discontent was superadded religion. It was heard with grief and astonishment that the credit given to the professions of the prince on this subject was unmerited, as he had, during his residence in the Peninsula, consented to sacrifices which bespoke no attachment to the established persuasion of his country ; and his hasty marriage with Henrietta Maria, attended with great indulgence to her creed, and secret articles in favour of Catholics, which were immediately acted upon by a suspension of the penal laws against that obnoxious body, seemed to verify their fears. Nor was the general apprehension slightly augmented by the protection and promotion of churchmen whose doctrine approached to the Romish, and was fraught with the same political tendency. When it was perceived that the system pursued in the last reign, of rendering the church subservient to the views of the court, by which religion was degraded into an engine of royalty, was to be adopted on higher ground in this, the continuance likewise of a counter-union, composed of what were reproachfully denominated Puritan principles with a spirit of freedom, followed. The intrepidity that encouraged an appeal to the common source of the Chris-

ian faith against the dogmas of ecclesiastics, dictated bolder sentiments on politics, and when a plot to drag men out of their religion, in order to delude them into acquiescence with arbitrary power, became manifest, it inspired a resolute tone of resistance. The feeling, too, could not be confined to those who considered the abstract tenets of importance in themselves. Generous minds scorn the idea of having a creed obtruded on them; and all who sincerely desired to oppose the unconstitutional proceedings of the court naturally strengthened themselves with the alliance of a party that agreed with them in politics, and, from suffering under one species of oppression, could safely be relied on as determined auxiliaries. The former, indeed, were bound on principle to espouse the cause of this injured body, as an integral part of that grand one in which all the independent members of the community were interested to cooperate. In this manner, the popular favour which beamed upon Charles at the close of the last reign was almost immediately converted into distrust.

The espousals with Henrietta were rather indecently solemnized by proxy in France, with great pomp and at vast expense, before the obsequies of James; and on the 22nd of June she was conducted by Buckingham to England. Charles met her at Dover, and she then made a confession and a request, indicative of a temper very opposite to that imperious one which, in no small degree, contributed to the subsequent calamities of her husband. She told him, that from her inexperience, as well as ignorance of the manners of England, she might commit errors; but that she would be always ready to acknowledge and amend them when she was apprised of her faults; and that she hoped he would employ no third party to inform her of them.*

The king's
marriage.

* Rushworth, vol. i. p. 170; see letters relative to it in Ellis's *Col.* vol. iii. p. 190 *& seq.*, relative to the marriage, the character and appearance of the queen, and the first intercourse of the married pair.

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Church
affairs.

Church affairs were an early subject of consideration in the cabinet. Bishop Laud, who, in the late king's time, had delivered to the duke a little book about doctrinal Puritanism, now also gave him a schedule, containing the names of ecclesiastics under the letters O. and P.; O. standing for Orthodox—P. for Puritan; in order that it might be shown to the king, and preferment, of course, confined to the former.* Thus early was digested that exclusive system of church policy, which afterwards produced such memorable effects. While measures were devised against the Puritan party, under which were comprehended, in the court register, all who refused to subscribe to every doctrinal innovation of the king and bishops, together with those that were known merely as defenders of the political rights of the people; an indulgence, contrary to the laws, was extended to the Catholics. In favour of that obnoxious body, private articles to this purpose were agreed to in the treaty of marriage: 'That both ecclesiastics and laymen imprisoned since the last proclamation should be set free; that English Catholics should be no more molested on account of their religion, and that their goods seized after the proclamation should be restored. As an earnest of the promised indulgence, a special pardon was granted on the 16th of May, without the formality of a conviction, to many Romish priests, of all offences committed by them against the penal laws. To the feelings of that age, however, another circumstance was perhaps more annoying—The erection of a chapel at Somerset House, for the queen and her family, with adjoining accommodation for Capuchin Friars, who were placed there, and permitted to walk abroad in their religious habits. 'Thenceforward,' says Rushworth, 'greater multitudes of seminary priests and Jesuits repaired into England out of foreign parts.'† In our times, the prejudice against Catholics is as little creditable to the heart as

* *Id.* vol. i. p. 167; Laud's *Diary*. 171; Hacket's *Life of Williams*, part ii. p. 6.
† Rushworth, vol. i. pp. 169 and

to the head. But men are the creatures of circumstances, and at the period of which we are treating, the religious parties throughout Christendom were actuated by feelings of which the enlightened portion of society in our age can form but a faint conception. Measured by the standard of their own age, the English Protestants were guided by no superior degree of intolerance. But, with the view of lowering the people, and exalting the king, the temper of the former has been ascribed to peculiar bigotry—that of the latter to more enlarged notions; whereas, the indulgence on the one hand, and no small part of intolerance on the other, flowed from a very different source. Indeed the defence set up for this monarch, on the head of religion, is destructive of itself. His illegal indulgence to Catholics is attributed to liberal views—his arbitrary intolerance towards all who would not embrace even his innovations to piety. The indulgence sprang from the desire of cherishing the acknowledged devotees of arbitrary power, and presented a melancholy contrast to the rigorous treatment of the Puritans in consequence of their opposite political tenets. Hence, men detesting the principle on which it was granted, earnestly opposed it; hence they beheld with indignation, which, to a certain extent, raged against the favoured body—a religious party indulged contrary to law, merely from the supposed servility of their political creed, while themselves were persecuted with daily increasing rigour. Besides, they conceived, with justice, that every mark of favour to that obnoxious party, every publication of high-church doctrine, was a prelude to some fresh disaster to themselves. They, by their apparent intolerance, therefore, resisted the approach of an evil which they perceived was calculated to try the national pulse, and, though diminutive at the time, would swell to the most alarming height, unless encountered with seasonable opposition.

The young king and Buckingham, for that minion's ascendancy continued unlimited, pursued their purpose of a

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Spanish war with unabated fury, though it soon appeared that they had overcalculated the popular favour upon which their hopes of success were chiefly founded. The inveterate national antipathy to a match with Spain was so gratified by a breach of the treaty, that the prince easily obtained credit to the statement of the cause, and a happy reign was prognosticated from this early indication of character. But the people were quickly undeceived, and the almost immediate treaty for a marriage with a daughter of France farther convinced them that Charles little participated in their religious sentiments. Even their ardour for the recovery of the palatinate, the main object with them in the war, though reckoned a subsidiary one by Charles and his favourite, began to cool after the disgraceful miscarriage of the expedition already alluded to, as they despaired of success from the incapacity of the administration. But discomfiture had a contrary effect upon the king and the duke, whose glory became by it more deeply interested in the issue; and while they did not mitigate their rage against Spain, they levied fresh troops (in the transporting of which martial law was proclaimed to prevent disorders), for the recovery of the palatinate,* and formed alliances to cooperate with them on the Continent. A confederacy was entered into with France, Holland, and Denmark, of which England was the head; and had matters even then been conducted with sagacity and firmness, the union of such powers with the German Protestants must have been overpowering; but it was the fate of this monarch to be uniformly unsuccessful in his foreign undertakings.

Such was the king's passion for the war, that he entertained the design of re-assembling the old parliament to obtain speedy aid, and was, with difficulty, dissuaded from so unprecedented a measure. But, though he yielded so far as to the advice of his council, he, happily for the

* Rush. vol. i. p. 168.

kingdom, could not brook the delay corruptly enjoined by the Lord Keeper Williams to afford his adherents the accustomed opportunity of dealing with the different towns, boroughs, and shires, to nominate representatives to promote his views ;* and therefore, in all probability, met the fairest representation which had occurred during the dynasty of his house.

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Parliament had been summoned for the 14th of May, but was prorogued on account of the marriage till the 31st, and afterwards till the 13th of June. It assembled then in the metropolis at an awful juncture, as one of the most dreadful pestilences ever known in the nation raged at that time,†—a circumstance which excited a suspicion that the motive for bringing them thither at such a season was to take advantage of their alarm for their personal safety by a hasty demand, which it was imagined that to avoid the danger attending their residence in town, during the time necessary for investigation, they would grant, without the bitter accompaniment of an enquiry into grievances or the causes of the war which had been resolved upon with Spain. The business was opened by his majesty in person, who told them that their attention was not called to any new business, but one which had been entered upon in his father's reign with their own advice ; and he trusted they would be as liberal in maintaining, as they had been ready to advise the war ; that the work was in itself of so just and glorious a nature, that his late majesty might appear to some backward in beginning it ; but that this proceeded from his great wisdom, which rejected an undertaking till he were assured of the means of conducting it to a happy termination ; yet, that when he perceived how greatly his confidence had been abused, and was confirmed in

A Parlia-
ment, 13th
June, 1625.

* Hacket's *Life of Williams*, part
ii. p. 4.
† Rush. vol. i. p. 171 ; see allu-
sions to the plague by Mead to Sir

Martin Stuteville, in Ellis's *Let.* vol.
iii. pp. 193, 203, 205, 207 *et seq.*, 209
et seq.

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his opinion by parliament, his preparations sufficiently testified his alacrity in the cause. Charles then reminded them of his having been employed by them to persuade his father to break off the two treaties on foot with Spain ; and he expressed a hope that, as he had not entered upon the war a free unengaged man, this, his first undertaking, would not fail through the want of their assistance, which he expected a sense of their own danger from the plague would teach them the propriety of granting speedily. He concluded with observing, in order to remove the jealousy which had begun to possess men's minds about his religion, that some might suppose, and malicious persons had circulated, that he was little attached to the national faith ; but that he could say, though he would not arrogate the rest, that he had been educated under Gamaliel's feet, and they might be assured of his zeal and fidelity. The declaration was unproductive of any great effect.

The subject of supply was taken up by the lord keeper where the king broke off. He told the house that the subsidies granted last parliament were all expended, of which an account should be rendered, together with as much more of his majesty's revenue ; and stated, first, that his majesty expected they would bestow this meeting, which must be necessarily short, upon *his*, or rather *their* actions (thereby intimating, that by advising the breach of the treaties, they had made the war their own), and that he pledged himself to permit them to re-assemble in the winter as early, and for as long a period as they chose, to settle domestic business ; secondly, that, if subsidies should be thought too tardy a mode of raising money, the king desired to hear, not propound, the way.*

The temper of the Commons by no means corresponded

* Cobbett's *Parl. Hist.* vol. ii. p. 1 et seq. ; *Old Par. Hist.* p. 345 et seq. ; Rush. vol. i. p. 171 et seq. ; Sanderson's *Charles I.*, p. 7 et seq. ; Franklyn, p. 108 et seq. ; Hacket's *Life of Williams*, pt. ii. p. 8 et seq.

with the expectations of the king. Their having been summoned to the metropolis at so calamitous and dangerous a season, which prevented them from continuing above a few days together; the promise of rendering an account of the last subsidies which, as the money was to be expended by commissioners nominated by parliament, recalled to their minds the deception that had been practised; the hint about a new way of raising money, importing the expectation of an unusual grant, and the desire expressed from the throne that they should confine themselves to the mere object of providing for the wants of the Crown, and trust to the sovereign's generosity, for an opportunity to re-assemble afterwards for domestic business, were not calculated to allay the jealousy which other circumstances had engendered. It is so obvious, so generally admitted a principle, that the national security for frequent meetings of the great council, and all the liberties of the people, depend on the wants of the Crown, that we should not have deemed it worth a remark, had it not been for the denouncement of the exercise of the power arising from that source, as an un dutiful capitulation with the sovereign. Had the Commons, therefore, resigned the authority thus vested in them by the constitution, and been satisfied with the promise of being allowed to meet at a future time to provide against domestic grievances, of which the kingdom complained, they would have betrayed the cause of their constituents, and proved themselves unworthy of the name of a legislative assembly. Past experience, as well as the events of a few months, or rather weeks hence, demonstrated that their future meeting would have endured no longer than while their measures were agreeable to the monarch, and that the royal assent would not have been obtained to one bill of public utility which did not correspond with his own particular views: in other words, that the mere will of the prince would have been substituted for the authority

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of parliament. This assembly, however, was not of a description to fall into such absurd policy, by complying with so presumptuous a demand, and the favourite's hopes were equally irrational. He had flattered himself that the general zeal for the recovery of the palatinate, and indignation against Spain (the offspring, partly of fear from the apprehended consequences of the intended match, and more of mistake from his false statement*), together with the first burst of affection for a young king, the alleged necessity for a speedy and effectual supply, and the danger of a long session at such a sickly season, would blind the Commons to the result of an inconsiderate and extraordinary grant; but there existed too much penetration and firmness in that body, and the truth had been too clearly discovered—for success in such a scheme, and as the plot to take them by surprise was perceived, it unavoidably recoiled upon its projectors.

The subject of grievances having been early broached in the Lower House, it was remarked by Sir Edward Coke, that, at so early a period of this reign, there could yet be no ground for complaining of new grievances; and therefore, that there ought to be no committees for grievances; but that as those of the last reign continued, and the petition of the last parliament had been preferred too late to receive an answer from the Throne, they ought to resume that business where it had been left, since though the prince to whom the complaint was made, was dead, the king lived, an interregnum being inconsistent with the principles of the constitution.† This course was equally prudent and expedient, being calculated no less to prevent soreness to the new monarch than to remove the evils; and here we may remark that one of the grievances complained of to parliament

* Hacket's *Life of Williams*, part ii. p. 5. *Par. Hist.* vol. vi. p. 351; Rushworth, vol. i. p. 173.

† *Cob. Par. Hist.* vol. ii. p. 6; *Old*

by the merchants and by the Commons to the king, was an illegal imposition upon wines, which yielded annually 30,000*l.*; an imposition so oppressive, that the merchants declared its continuance would make them abandon their trade. Another party pressed for an account of the last subsidies granted for relief of the palatinate; a third called for the execution of the laws against seminary priests and Jesuits, together with such as resorted to ambassadors' houses; and a petition, drawn by Sir Edward Coke, on religion, and another for a general fast on account of the plague, were transmitted to the Lords for their concurrence, before being presented to the Throne.*

It was argued, on the ministerial side, that the chief cause of the calamities which had attended the last reign had arisen from 'distastes' (disagreements) between the king and the parliament; and that the first approach to a reconciliation had been given by his present majesty, then prince; an event from which had accrued greater benefit to the subject than had been experienced for a hundred years (probably the breach of the treaties with Spain was meant); that, from this, as well as his good natural disposition, his freedom from vice, his conduct during his travels, and his having been bred in parliaments, the happiest augury might be formed of his reign; and that they ought to confirm this by measures 'to sweeten all things between king and people, that they might never afterwards disagree.' The Commons steered a laudable course, moderately pressing grievances without losing sight of due respect for the king, and, 'as the first-fruits of their love,' voted a supply of two subsidies.

Charles granted a general fast, and returned a gracious answer to the petition upon religion. He also thanked the Commons for the manner in which the supply had been voted, as it had proceeded from pure affection, without having been first moved by his proper officers; but

* Rushworth, vol. i. pp. 173, 174. *Old Par. Hist.* vol. vi. pp. 354, 355 *Id.* p. 351; Cob. *P. H.* vol. ii. p. 6.

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he intimated that it fell far short of the sum required by the exigency ; and he expressed a hope, mingled with surprise at the previous proceedings, that they would not interfere with the new imposition on wine, since it had been set by his father for the support of the prince palatine and his family, and was necessary for that purpose. It need scarcely be observed that, on the same principle, any other tax might have been imposed, and the legislature superseded.*

Though the grounds of disagreement were easily discernible in these matters, yet it was on a case now brought before the Commons that Charles unfortunately displayed his characteristic stiffness in supporting his servants, and those principles of religion which the kingdom at large so greatly disliked.

Montague's case.

At first sight, no two things appear more unconnected than the Arminian tenets, about free-will, predestination, and grace, and the principles of passive obedience. But, besides that nothing can be unimportant in religion, and that it is as irrational in regard to his own interest, as unjust towards the people, for a prince to tamper with the national faith, it may be observed that it is the misfortune of mankind to intermingle with their temporal affairs and prospects, points the most abstruse and seemingly foreign to them, by which the hopes and fears of the first, inflamed with pride and the other passions attending disputes, are communicated to the last, and rage with augmented fury from being clothed to the votaries themselves, with the semblance of principle, since, instead of being checked by a liberal intercourse with the world, they gather accumulated force from sympathy. Thus the silly disputes between the Nominalists and Realists were productive of sanguinary dissensions and inhuman cruelties ; and the Arminian tenets themselves had in Holland been accompanied with memorable consequences,

* *Journals*, 8th July, p. 807 ; *Ellis's Col.* vol. iii. p. 202 *et seq.*

which were afterwards felt in England. At the outset, James had protested keenly against the doctrine (a course likewise pursued by the Prince of Orange, as it was the doctrine maintained by the party who opposed him), and had even declared the author worthy of fire. But it was, in process of time, adopted by the leading clergy of England, and incorporated with other tenets approaching to the Romish; and it must be confessed that they acted with consistency, as it is impossible to reconcile the power of absolution, which they arrogated, with the principle of predestination. Though, therefore, it is possible that the mere broaching of the abstract points might have excited little alarm, yet when it came, accompanied with power, and with what the people most dreaded, the restoration of the Catholic tenets—when so vast a degree of importance had been communicated to the doctrine by the flame which it had raised in the Low Countries, and it was seen that, in Holland, the Arminians, to use the language of the English Throne a few weeks hence, ‘inclined to the Papists rather than to their own safety;’ the opposition of the people, who viewed the merits of the dispute through all the circumstances with which it was invested, was naturally commensurate with the keenness of the clergy. One of the chief champions of the high-church doctrine, which now included Arminianism, was Mr. (afterwards Dr.) Richard Montague, private chaplain to the king. He had, towards the close of the late reign, published a book which had been brought under the review of parliament, and committed by the Commons to the censorship of Abbot, Archbishop of Canterbury. Abbot, who was supposed to lean to the popular party, marked his disapprobation of the work by admonishing the author. The bishops of the Arminian party, however, not being inclined lightly to abandon their principles, advised Montague to write a defence of his production, which they promised to attest by their joint authority; but, with a meanness no less deplorable

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than the advice was, to say the least of it, impolitic, they subtly withdrew their names, leaving Dr. Francis White, as he often complained, to appear alone as the abettor of the work.* Abbot forbade the publication of the defence, and endeavoured to suppress it; but it was published in spite of his orders, and dedicated to King Charles himself, with the view of striking terror by the authority of such a patron, and engaging him to declare in favour of that party at the very opening of his reign.

As this has been pronounced by a great historian a very moderate book, which gave offence merely because it maintained that Catholics might be saved, it becomes necessary to present a brief view of the principles, &c. which gave offence. That the Church of Rome is '*vera ecclesia Christi et sponsa Christi, et eodem fundamento doctrinæ et sacramentorum nititur*;' that he 'respected Bellarmine' (the great champion of the papal supremacy), 'but slighted Calvin, Beza, Perkins, Whitaker, and Reynolds;' that 'he much discountenanced God's word, disgracing of lectures and lecturers; of preaching itself, of which he says, prating, preaching, and lecturing; yea, even of reading the Bible,' regarding which he observes, that 'never a saint-seeming, bible-bearing, hypocritical Puritan was a better patriot than he.' The committee of the Commons further report, 'that the whole frame of this work is a great encouragement of Popery—in maintaining the Papists to be the true church, and that they differ not from us in any fundamental point. If, therefore, they hold us heretics, and not to be saved, and we hold not the contrary of them, who will not think it safer to be in their church than in ours? The papists read and commend this book, and commend it to others to read, when they endure not the reading or having our books,' &c. These, however, may not be thought the most excep-

* Rushworth, vol. i. p. 173.

ionable parts of Montague's doctrine : he maintained that images might be used for instruction and as excitements to devotion ; and, in a treatise concerning the invocation of saints, he affirmed and maintained that saints have not only a memory, but a peculiar charge of their friends ; and that it may be admitted that some saints have a peculiar patronage, custody, protection, and power, as angels also have, over certain persons and countries by special reputation. The real presence, the sacrament of orders, signing with the sign of the cross, confession and absolution, also formed part of his tenets.* Having given a proof of the principles complained of by the Commons, we shall present a sample of his moderation :—‘ The committee think there is enough in this book to put a jealousy between the king and his well-affected subjects. He says, there are some amongst us who desire an anarchy, *and means the Puritans, whom yet he hath not defined.* He plainly intimates that there are Puritan bishops, which, the committee conceive, tended much to the disturbance of the peace in church and state.’ Besides these, there were various minor points objected to, as the contempt expressed by him for the Synod of Dort, so highly honoured by the late king, &c. ; and the house resented his contumacy in repeating an offence which they had formerly checked, as well as in attacking two individuals, Yates and Ward, whom it had taken under its protection, and whom, though they had subscribed the articles, he denominated Puritans in their hearts.†

* Heylin's *Life of Laud*, p. 152 *et seq.* ; *Cob. Par. Hist.* vol. ii. p. 6 ; *Old Par. Hist.* vol. vi. p. 353 ; *Journal of the Commons* ; *Rush.* vol. i. p. 200 *et seq.*

† *Cob. Par. Hist.* vol. ii. pp. 6, 11 ; *Old Par. Hist.* pp. 353, 362 ; *Rush.* vol. i. pp. 173, 200 *et seq.* ; Heylin's *Life of Laud*, p. 135. This author tells us, that Yates and Ward charged as popish, doctrines which, though they held some correspondence and

agreement with the Church of Rome, were determined by the English church “ as the doctrine of the perpetual visibility of the church of Christ, the local descent of Christ into hell, *the lawfulness of images*, signing with the sign of the cross, confession and sacerdotal absolution ; the real presence, the reward of good works, the sacrament of orders ; quarrelling even with the very words sacrifice, altar, and the like. All

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Resolutions were entered into by the Commons, in conformity with the report of the committee, and Montague was bound in a recognizance of 2,000*l.* to answer at the bar of the house to the charges against him. In ordinary prudence, Charles ought not, particularly on so delicate a subject, to have interfered with their proceedings till they were submitted to his review in proper form ; but it was his misfortune at all times to conceive that his own character and interest were involved in those of his servants, and thus invariably to disappoint the people in their attempts to distinguish the personal qualities of the one from the acts of the other. He therefore sent a message to the Commons, informing them that Montague was his chaplain in ordinary ; that he meant to take the case into his own consideration ; and doubted not, by his manner of treating it, to give them satisfaction. The politeness of the message could not conceal the command which it implied ; and the house felt indignant at a proceeding which was deemed an infringement of its privileges.

The spirit which actuated the Commons against Montague appears to be inconsistent with the liberty of the press and the freedom of discussion, which have been attended with such valuable consequences. But it ought never to be forgotten, that the privilege of public discussion was denied to the popular body, and that, consequently, by permitting the publication of books which

which, upon a perfect examination, will be found to be the genuine doctrine of the Church of England." 'They also charged as popish,' says he, 'things not determined by the church, but left to every man's own opinion ; as the disputes concerning evangelical counsels, antichrist, and limbus patrum, of which the Church of England hath determined nothing' (p. 126). Now, what was the light in which the high clergy, Laud and others, viewed opposition to Monta-

gue's doctrine ? They complained to the favourite, a strange patron of the church—and stated, 'We must be bold to say that we cannot conceive what use there can be of civil government in the commonwealth, or of preaching in the external ministry of the church, if such fatal opinions as some which are opposite and contrary to those delivered by Mr. Montague, shall be publicly taught and maintained' (p. 137 ; *Cabala*, p. 156).

they were not allowed to answer, they connived at the triumph of their enemies, as well as at the diffusion of their doctrine. Besides, men must, in justice, be tried by the standard of their own times; and in that age, and for long afterwards, the public mind was in too high a state of agitation to brook the free discussion of the disputed points betwixt Catholics and Protestants. This proceeded from no superior degree of intolerance in Englishmen, who, with the exception of the Dutch, were perhaps the most exempt from it of any Christian nation. This, however, is a narrow view of the subject. Had an obscure individual written to the same effect, his works might have escaped censure. But Montague, as the private chaplain of the king, and abetted by the ecclesiastics highest in court favour, was regarded as the organ through which the royal creed was promulgated to the nation; and as his works breathed intolerance and persecution, the people anticipated thence the systematic adoption of those innovations which were afterwards so violently obtruded upon the kingdom.

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The Commons had begun to enter on other business, when the violence of the plague made the members so uneasy at Westminster, that they resolved to apply to the king for a short recess; and as the Upper House joined them in an application, Charles granted their request; but he intimated his intention to reassemble them soon for the support of the war wherein they had engaged him, which could not be carried on without money.

Recess of
parlia-
ment

The unhappy jealousy already entertained of the court was greatly augmented by a circumstance which occurred during the recess. The late king, a little before his death, had, during the treaty of marriage, promised a loan of ships to France, to be employed against the Spanish interest in Italy and the Valtoline; but suspecting afterwards that the real object of the French monarch was to use them against the Huguenots of Rochelle—a proceeding which could not fail to rouse the indignation of the

Loan of
ships to
France to
be used
against
Rochelle.

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British—he, to prevent such a breach of faith by any seduction of the mariners, issued orders that the several crews should be composed almost exclusively of Englishmen, whose fidelity to their country, and obedience to their commanders, were firmly relied on. Buckingham, however, who was from the beginning apprised of the French king's purpose, had resolved to promote it in opposition to the commands of his master; and, as Charles was no less forward in the business than his minion, the death of James removed every obstacle from the throne. But the feelings of the owners, commanders, and their respective crews presented a difficulty to the execution of the project, which, as it was hopeless to remove it either by the direct authority or secret influence of the Crown, the king and his favourite determined to overcome by stratagem. The fleet assigned to this service consisted of seven merchantmen and one ship of war called the *Vanguard*. The merchantmen, having been first impressed into the English service, were urged to enter into that of France, upon the assurance of being employed against the Spanish interest, then so hateful to England. But, after matters had been arranged upon this understanding, instructions were secretly given by the duke and the French ambassador to draw the contracts in general terms—*that* they should serve against any country except their own, it being hoped that the owners and commanders, unp suspicious of a snare, might overlook the generality of expression in the rubbish of technicalities with which legal instruments are loaded, and thus be bound to the performance of conditions which they would have rejected with abhorrence. In this, however, Buckingham and his coadjutors had over-calculated their own dexterity; for the owners and commanders detected the fraud, and demurred to terms, under the colour of which they might be trepanned into so odious a service. But in the sequel he was more successful. Affecting to anticipate their apprehensions, he privately instructed Pennington, the

Admiral, neither to serve against the Huguenots, nor, lest by undue advantage should be taken, to permit more Frenchmen to enter the ships than the crews could master. Mordaunt was deceived; and having communicated the effect of his instructions to the respective owners and commanders, whom this specious conduct likewise imposed upon, they no longer hesitated to sign and seal the contracts. But on their approach to the French coast, they discovered the plot against them, and determined that the general words should not prevail over the honest understanding of the contract. The *Vanguard*, trusting to her strength, entered Dieppe; the rest, to prevent a surprise, lingered behind, resolved to be sunk rather than engage in a service that appeared to them so unnatural. At this juncture, the French used every engine of seduction for the attainment of their object; but, from the admiral down to the meanest sailor, not a man was found capable of deserting the cause of his religion. The crew of the *Vanguard* itself wrote what is called a 'roundrobin' against the service, and laid it under the Bible of their admiral, whose sentiments accorded with their own. In the meantime, he received letters from the duke, and a warrant in the king's name from Conway, the secretary, to surrender the ships to the French government. But, as he was commanded at the same time not to desert his charge, he was willing to conclude, that if the crew positively persisted in their present resolution, he was absolved from performance, since it never could be his majesty's intention to leave him there alone. The French, who saw through the motive which dictated this construction of the matter, laboured to overcome it by the offer of a pension and other great rewards. When, however, the generous disdain of the English admiral, at their attempt to corrupt his integrity, convinced them of the impracticability of attaining their purpose in that way, they took a protest against him, as a traitor to his country—a proceeding which so enraged the sailors, that they instantly heaved

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anchor and sailed for the Downs, declaring that they would rather be hanged at home than be slaves to the French, and fight against the adherents of their own religion.

Arrived in the Downs, Pennington wrote to the duke for further instructions, but complaining bitterly of the service, and assuring his grace that the mariners would rather be hanged than return to France. At the same moment, ambassadors, dispatched from the Duke of Rohan and the rest of the Huguenots, implore the king and council against lending ships for their destruction, and receive fair answers from both; but orders, nevertheless, are sent to Pennington to return instantly to Dieppe and surrender the vessels; and to compel the merchantmen, even to sinking, to accompany him. Lest, however, in the present temper of the fleet, strong measures might not prove altogether expedient, a report, calculated to remove every objection to the service, was industriously circulated—that peace had been concluded between the French king and his Protestant subjects; but the delusion could not last, and the commanders of the merchant-vessels tried to escape. One of their number, Sir Ferdinando Gorges, was successful in his attempts to sail off; the rest were fired at by the *Vanguard*, and kept in check. The ships were therefore surrendered, but with the exception of one individual, a gunner, who, in the very act of charging a gun against Rochelle, paid the mulct of his baseness, the whole crews magnanimously refused to cooperate with the French court in destroying the friends of their own religion. To the owners and commanders, however, who obtained no adequate security for the hire or even restitution of their property, this compulsory surrender of their vessels was fraught with a grievous patrimonial injury.*

The completion of this unfortunate affair occurred about

* Rush. vol. i. p. 174 *et seq.*, p. 322 *et seq.*

the beginning of August, when parliament met again at Oxford, and Pennington hastened thither to lay before that assembly an account of the proceedings. To prevent the effect of such a disclosure, he was concealed by the interference of the court till the dissolution which quickly followed. But, though the regular and official report was thus withheld from parliament, the circumstances reached it, probably with not a little of that exaggeration which an unsuccessful attempt at concealment generally produces. Nor did it operate as a slight aggravation of the public feeling that part of the very money granted for the relief of the palatinate from sympathy towards a Protestant state, was understood to have been spent in equipping a fleet to destroy the Protestants of Rochelle.

Lord Keeper Williams earnestly dissuaded both the king and his favourite against re-assembling parliament on the 1st of August. He represented that, as the pestilence had now extended to various parts of the kingdom, the legislature could not meet in safety even at Oxford; and that the members, resenting an unnecessary exposure to contagion, would most probably permit their personal ill-humour to affect their public measures; that it was unusual to grant subsidy upon subsidy in the same session (and this was merely a continuation of that begun at Westminster), 'and it was not fit for the reputation of the king to fall upon the probable hazard of a denial;' and that, further, he had reason to believe that complaints were ready to be preferred against the duke, but that, were parliament prorogued till Christmas, the ill-humour would subside, leisure would be afforded for softening some of the principal members, and in the new session they would not hesitate to make a new grant. Charles himself appears to have been moved by these arguments, but the duke was inexorable.* He, in all

* Hacket's *Life of Williams*, part ii. pp. 13, 14.

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likelihood, persisted in his resolution, from the hope that a strong picture of the necessity for an immediate supply, added to the danger of continuing the session above a few days, would induce the Commons hastily to vote money without entering into an investigation of his conduct, and before they heard of the loan of ships to France for the purpose of reducing Rochelle.

Parliament
reassem-
bles at
Oxford, 1st
August.

The Commons no sooner met than the subject of religion was broached. The case of Montague was resumed, and Sir Edward Giles, following up a complaint against the practice of screening Popish recusants, produced evidence of six Romish priests having, at the intercession of foreign ambassadors, been pardoned on the 12th of July, the day succeeding that on which the lord keeper had, in the king's name, assured both houses that the rigour of the laws against seminary priests should not be relaxed. When Charles perceived that the Commons, instead of voting money, had entered upon the topic of grievances, he commanded both houses to attend him in the great hall of Christ Church; that by himself and his ministers, he might have an opportunity of convincing them of the necessity of considering his business first. Having addressed them himself in general terms, he left the particulars to his secretaries, Lord Conway and Sir John Coke, who stated that his present majesty had moved the late king to break off the treaties with Spain, and that they must have then foreseen that a war would unavoidably follow, both for the recovery of the palatinate and home defence; and that, in the prosecution of warlike measures his majesty had already advanced too far to recede with honour, having laboured to compass an offensive alliance with Denmark, Sweden, and the German princes, who had declined to enter into the league till they actually saw him in the field; that it appeared, by a statement presented to the last parliament of the late king, that the necessary expenditure of the war, the support of an army, and the subsidizing of foreign powers,

would not fall short of 700,000*l.* per annum ; that, in addition to this, 300,000*l.* had been required to fit out the fleet, fortify Ireland, and put the forts of England in a military posture ; that the sums already granted had been all expended, and considerable debts incurred ; for that the late king had left debt to the amount of 310,000*l.*, which continued as a burden upon the Crown, and the present king had, in spite of the strictest economy while prince, incurred debt to the extent of 70,000*l.*, while the expenses of his father's funeral, his own marriage, &c., had increased the amount to 192,000*l.* 'These things,' it was said, 'have called the present parliament hither, and he present charge of all amounts to above 400,000*l.*, the farther prosecution whereof the king being unable to bear hath left it to their consultations.' The whole of this sum, however, was not demanded from the Commons ; the ministers of the Crown moved, in the first instance, for two subsidies and two fifteenths only, or, at the highest calculation, for about 200,000*l.*, payable 'in April and October come twelvemonths,' and they afterwards restricted their demand to two fifteenths, or about 60,000*l.*, payable at a distant date ; nay, Buckingham himself in answer to a query of the Commons, when he condescended to vindicate his public conduct, 'whether a considerable sum of money be yet required ?' answered, that 40,000*l.* were yet necessary—a clear proof that the statements by ministers, of large sums, were embarrassed with difficulties that ought to have been explained, and that the Commons were not mistaken in supposing that they had been summoned at so unseasonable a period, to take them by surprise.*

Crooked policy generally defeats itself. Intelligence of the loan of ships for the reduction of Rochelle had already secretly reached Oxford ; and when, in order to gain the present object by flattering the passions, it was

* *Old Par. Hist.* vol. vi. p. 357 *et seq.* ; Sanderson, p. 13 *et seq.* ;
eq. ; Cobbett's *Old Par. Hist.* vol. ii. Rush. vol. i. p. 176 *et seq.*

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stated by the ministers of the Crown, that 'the French king chose to sheath his sword in the bowels of his own subjects, rather than declare war against Catholics,'* it inevitably farther inflamed the indignation which the event itself excited. Indeed, a greater insult to the grand council of the nation can scarcely be figured, than such an attempt to impose upon it. The ministers were not more fortunate in their allusion to another topic. That 'in the Low Countries the sect of the Arminians prevailed much, who inclined to the Papists rather than to their own safety, notwithstanding that the enemy had a great and powerful army near them, so that his majesty was forced to protect and countenance them with an army of six thousand men from hence, with a caution of repayment, and the like supply further if required.† The allusion to the Arminians of the Low Countries immediately suggested the inconsistent conduct of the executive, which affected to condemn principles abroad that it cherished at home.

The royal address, and the efforts of ministers, failed of effect. The Commons resolved that religion should have the first consideration, public grievances the next, and the subject of supply the last. But, in the meantime, it was observed that necessity was the perpetual reason alleged in all parliaments for supplies; that, in this instance, if it existed, it sprang from improvidence, from frauds in the customs on the one hand, and from old unprofitable offices and new invented ones on the other, together with pensions to the extent of 120,000*l.*, lately 80,000*l.*, and, in Queen Elizabeth's time, only 18,000*l.*, the accumulation of offices in one person, and needless waste in apparel, diet, &c. It was argued that though one parliament had advised a war, yet if matters were managed by contrary designs, and the treasure misemployed, another

* See Statement, by Lord Conway and Secretary Coke, in Rushworth, vol. i. p. 178, and the other authorities.

† Lord Conway's Speech.

was not going to be carried blindfold into measures not matured by sound counsel; and it was observed that, if the public money were misemployed, so was it unwarrantably raised, by the sale of offices, including places of judicature, for which about 140,000*l.* had been given, by baneful monopolies, and by illegal customs, while the protection of commerce, the only principle on which customs were exigible, was so neglected that Turkish as well as French pirates infested the very coasts, and, without molestation, captured vessels in the sight of land: that, what was become of all the money raised by the act of resumption of the Crown lands: that, in the present pecuniary embarrassment of the Crown, pensions should cease: and that, in a contest for his brother-in-law's inheritance, the king himself should contribute towards the war, which, by the sale of useless forests, &c., he might easily accomplish; but that it could not be conceived how money payable at so distant a date could supply the present wants, in regard to fitting out the fleet for an immediate expedition. It was moved that enquiry should be instituted into the object of the newly prepared fleet and army, no enemy having been declared; and as to whether the duke did not break the match with Spain out of malice to Olivarez, and conclude the other on still harder terms, as well as whether the ships employed against Rochelle were not fitted out from the subsidies granted for relief of the palatinate.*

To divert the Commons from this course, and soothe them into compliance with the demands of the Crown, Charles, at their desire, gave a full and distinct answer to their petition on religion, which he had formerly graciously received; and Buckingham himself plausibly explained the measures pursued by him, particularly in respect to the fleet; regarding which he observed that the enemy might easily be surmised, and would

* Rushworth, vol. i. p. 179 *et seq.*; Cobbett's *Parl. Hist.* vol. ii. p. 11 *et Old Parl. Hist.* vol. vi. p. 363 *et seq.*; *seq.*; *Journals*, p. 810 *et seq.*

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instantly be proclaimed when the fleet was ready to put to sea. But these failed to alter the resolution of the Commons, and the king sent to them a message on the tenth day of their meeting, and the sixth after the address from the Throne, intimating that neither his necessities brooked delay, nor the pestilence their continuing longer together; that if they granted a supply now, they should meet again at Christmas; but that, if they declined to gratify him in the first request he had ever made, and spent their time in fruitless debates, he would take that care of their healths which themselves neglected. Ministers now restricted their demands to two fifteenths, payable at a distant date, and amounting to about 60,000*l.*; but it was answered that the wants of the Crown must be inconceivably great if the parliament were summoned at so calamitous a season for such a paltry sum; and that the object was not supply, but to obtain a precedent for repeated demands in one session; for that money, payable at a distant period, could not be employed in the immediate service of the fleet; and, as to its being taken up on credit, surely the credit of the Crown was not sunk so low that it could not raise 40,000*l.*—the sum alleged to be yet requisite for the present exigencies. Admitting, however, the wants of the Crown to be as great as they were stated to be, they ought only to operate upon parliament as an additional incitement to seize the favourable juncture for insisting on a reformation of the government; and it was remarked, in the course of the debates, that this was no capitulation with the sovereign, but an ordinary parliamentary course, without which the commonwealth could neither supply the king, nor yet subsist. While, therefore, they voted an address declarative of their readiness to supply the sovereign in all honourable actions founded on sound counsel, they refused to vote away the public money without some assurance of a change of measures; and Charles, who thought ‘nothing more derogatory to the

honour and prosperity of a king of England than to be cast upon the necessity of calling parliaments, which rendereth them obnoxious to the power and pride of each popular spirit, and makes them less in reputation both at home and abroad ;' * who, in fact, conceived the duty of the Commons to consist in apportioning the taxes rather than in granting them, regarded their proceedings as equally presumptuous in them, and dishonourable to him ; and having observed that they reflected against some persons near him, particularly the duke, whom he supposed himself bound to protect, he instantly dissolved the parliament—a proceeding that proved fatal to the future peace of his reign.†

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VI.

Parliament
dissolved.

The lord keeper Williams is said to have exerted all his talents to prevent this rash and ill-advised measure. To the duke he argued thus : ' You have brought the two houses hither, my lord, against my counsel ; my suspicion is confirmed that your grace would suffer for it. What's now to be done but to wind up a session quickly ? The occasion is for you ; because two colleges in the university, and eight houses in the city, are visited with the plague. Let the members be promised fairly and friendly that they shall meet again after Christmas ; requite their injuries done unto them with benefits and not revenge ; *for no man that is wise will show himself angry with the people of England.* I have more to say, but no more than I have said to your grace above a year past at Whitehall. Confer one or two of your great places upon your fastest friends, so you shall go less in envy and not less in power. At the close of the session declare yourself forwardest to serve the king and commonwealth, and to give the parliament satisfaction. Fear them not when they meet again in the same body, whose ill affections I expect to mitigate. But if they proceed, trust me with your cause when it is transmitted to the House of Lords,

* Heylin's *Life of Laud*, p. 117.

† Rushworth, vol. i. p. 191 ; Cob-

bett's *Parl. Hist.* vol. ii. p. 36 ; *Old Parl. Hist.* vol. ii. p. 402.

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and I will lay my life upon it to preserve you from sentence or the least dishonour.’* Unluckily for the worthy prelate’s intercession, he was, notwithstanding the most inconceivably abject professions of unbounded devotion, at that very moment suspected of intriguing with the leaders of opposition for the duke’s impeachment—a suspicion which does not appear to have been altogether groundless, and which the duke would the more readily believe, because he happened to be engaged in a similar plan for the ruin of the bishop, as a return for his supposed treachery during the favourite’s absence in Spain.† ‘It is not wonderful, therefore, that Buckingham should have descried, in the advice to expose himself to trial, a plot for his destruction, and should have replied, “I will look whom I trust to ;” and flung out of the chamber with menaces in his countenance.’ In this he merely acted upon the principle of an excellent maxim of Fielding, ‘never to trust the man who has reason to suspect you know he has injured you ;’ and whoever has studied the prelate’s character will not hesitate to believe that he was prepared to act a double part—that, had the duke committed his destiny to such hands, the other, could he have promised himself a greater advantage by destroying than saving his benefactor, would not have scrupled in his choice. Failing in this quarter, Williams applied directly to the king, ‘ imploring him with reasons, with supplications, with tears, to remember a time when, in his hearing, his blessed father had charged him to call parliaments often, and continue them, though their rashness sometimes did offend him ; that, in his own experience, he never got good by falling out with them. “ But chiefly, Sir,” says he, “ let it never be said that you have not kept good correspondence with your first parliament. Do not disseminate so much unkindness through all the counties

* Hacket’s *Life of Williams*, part ii. p. 16.

† Heylin’s *Life of Laud*, p. 130 ;

Hacket’s *Life of Williams*, part ii. pp. 17, 18.

oroughs of your realm. The love of the people is
alladium of your crown. Continue this assembly to
er session, and expect alteration for the better. If
lo not so, the next swarm will come out of the same
' To this the lords of the council did almost concur ;
; wanted Buckingham's suffrage, who was secure that
king's judgment would follow him against the whole
' * Williams's motives were suspected, and impas-
d eloquence only provoked displeasure towards
elf particularly, as his exact intelligence of the
ons of the opposite party evinced a correspondence
them.

acket's *Life of Williams*, part
3.
public sentiments may be in-
from the following letter from
Dromwell to the duke: 'They
eople) offer to lay wagers the
es not out this year; and that
sity a parliament must, which,
it comes, sure it will much
ent you. *It is wondered at,*
ice the king did give great gifts
Dutches of Chevereux, and
bat then went, how now a small
the parliament should be called
And let the parliament sit when
ill, begin they will where they
They say the lords of the
knew nothing of Count Mans-
journey, or this fleet, which
ents even the best sort, if not
bey say it is a very great bur-

then your grace takes upon you,
since none knows anything but you.
It is conceived that not letting others
bear part of the burthen you now
bear, it may ruin you, which Heaven
forbid. Nothing is more wondered
at than that one grave man is not
known to have your ear, except my
good and noble Lord Conway,' &c.
(Rush. vol. i. p. 195.) This letter
was from the most devoted servant,
who wished all noble thoughts to
forsake him when they did not in-
cline to the duke, and desired to see
the favourite 'trample the ignorant
multitude under foot.' (*Ib.*) Con-
sidering the character of Bucking-
ham, and the absurdity of committing
everything to him, is it wonder-
ful that supplies were reluctantly
granted?

CHAPTER VII.

FROM THE DISSOLUTION OF THE FIRST PARLIAMENT OF CHARLES I. TO THE CALLING OF THE THIRD: CONTAINING AN ACCOUNT OF THE EXPEDITION AGAINST SPAIN — THE SECOND PARLIAMENT — THE MISUNDERSTANDING BETWEEN THE KING AND QUEEN; AND THE FRENCH WAR—WITH THE UNSUCCESSFUL ATTEMPT UPON THE ISLE OF RHÉ.

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VII.

War with
Spain, and
compul-
sory loan.

THE unhappy termination of the parliament did not divert Charles from his purpose of a Spanish war, which he commenced without the formality of a proclamation; and the supply, in which he had been disappointed from the legislature, was drawn from the people in the shape of a compulsory loan.* Though this measure was not altogether unprecedented, it was directly against law; and, considering the delicate ground on which he now stood, nothing, at such a juncture, could be more imprudent. The annual revenue of the Crown, which was fully adequate to the ordinary exigencies, amounted to about 450,000*l.*; and surely, as a little economy might have soon saved out of that the 40,000*l.* now required, so, unless there had been some unaccountable jealousy of this prince, the sum might have been raised by a voluntary loan upon interest. But if the measure now adopted were generally resented as unconstitutional, the public indignation was augmented by the principle followed in exacting it. Since the king pretended a right to exact the loan, he ought to have applied, by the same officers, to all the higher ranks alike; yet, in conformity with the policy of this family to raise the nobility and clergy as auxiliaries of monarchy, he issued out individual writs to

* Rushworth, vol. i. p. 192; Whitelocke, p. 2; Franklyn, p. 113.

he several members of these bodies.* How far the discontent was allayed by a proclamation, issued with that view, against recusants, we are not informed. From some of the leading Papists, arms and money were extorted.†

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The fleet, consisting of eighty sail, with the addition of twenty from the Dutch, and carrying ten thousand land forces, was now dispatched on an expedition to the Spanish coast; and had the success of this mighty armament, which, for its magnitude, presented a novelty to mankind, been at all commensurate with the most rational expectations, the people might have derived, from the external glory of the kingdom, some comfort for the invasion of their rights. But, in the uniform ill success of his foreign policy, this prince experienced the effects of unsound counsel. Instead of appointing to the command of the fleet Sir Robert Mansel, an officer who had already distinguished himself, and who, from his character and situation, seemed entitled to it, Buckingham nominated Cecil, Viscount Wimbleton, a creature of his own, whom the public voice pronounced destitute of the talent for such an enterprise, and whose every proceeding was characterised by want of plan and by absurdity. No council of war was called to determine upon the point of attack, till the arrival of the fleet off Cape St. Vincent, when so many clashing opinions wasted the time, that the enemy had leisure to prepare for their reception. The shipping in the Bay of Cadiz was allowed to escape, though it might have been captured almost without resistance, and would have amply requited the expedition both in honour and profit; while neglecting the advantages of his naval superiority, the commander resolved upon attacking the enemy on shore. The troops were therefore landed, and the fort taken; but the soldiers having fallen upon a store

The expedition to the Spanish coast, October 1625.

* See warrant, in Rushworth, vol. p. 192.

† *Id.* pp. 194, 246.; Cabala, letter about the Nobility, p. 383; Stra-

ford's *Despatches*, vol. i. p. 28, about the influence of the duke. All offices were filled by his creatures (Warwick's *State Papers*, vol. ii. p. 10).

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of wine, ran into such excesses that many were lost; and had the enemy been apprised of their condition, not a man would have escaped. It was deemed imprudent to trust longer, on a hostile shore, a body of men who had thrown off the restraint of discipline; and the commander having ordered their immediate re-embarkment, determined to wait for the Plate fleet, which was daily looked for, and still promised a rich harvest for his labours. But even this design his own mismanagement obliged him to abandon. The contagion broke out in one of the ships; and he, more anxious for the recovery of the sick than the safety of the living, ordered the infected to be distributed through the fleet, and thus extended the mischief to every ship. The general sickness then made him conceive it expedient to abandon his plan altogether, and return with dishonour to England. It is said that, had he deferred his return for two days longer, he might have accomplished his object.*

Corona-
tion.

The failure of this grand expedition, as it increased the public discontent on the one hand, so, on the other, by disappointing the prince's hope of plunder, and augmenting his zeal for the war, that he might recover the honour he had lost, it rendered the Crown more dependent on parliamentary assistance. According, therefore, to the prediction of wise men, a parliament was summoned; but, as if past measures had been insufficient to inflame disaffection, others were added at this critical season, when every means ought to have been adopted to soothe the public mind. The coronation was fixed for Candlemas, and on this joyful occasion miscarriages might have been forgotten and a happy augury of the reign revived, had it not been selected as a fit opportunity to display the principles of the court, and extort money from the subject. Laud, who officiated on the occasion, developed in the following language, the ecclesiastical system already determined on.

* Rushworth, vol. i. p. 195 *et seq.*; *I. et.* p. 168; Sanderson, p. 18 *et seq.*; Whitelocke, p. 2; Howell's *Fam.* Franklyn, p. 113.

‘Stand and hold fast, from henceforth, the place to which you have been heir by the succession of your forefathers, being now delivered to you by authority of Almighty God, and by the hands of us, and all the bishops and servants of God; and, as you see the clergy to come nearer to the altar than other men, so remember that, in all places convenient, you give them greater honour, that the mediator of God and man may establish you in the kingly throne, to be a mediator between the clergy and the laity; and that you may reign for ever with Jesus Christ, the king of kings and lord of lords.’ In his prayer for the king, he uses these words: ‘Let him obtain favour for the people, like Aaron in the tabernacle, Elisha in the waters, Zacharias in the temple: Give him Peter’s key of discipline, and Paul’s doctrine.’ As if even all this had not been enough, an old crucifix, found amongst the regalia, was ostentatiously laid on the table. On the other hand, all possessed of freehold inheritance to the extent of 40*l.* per annum were required to accept of the honour of knighthood, and pay the obsolete duties of knight’s fees; a species of extortion which gave rise to much discontent.*

In order to remove the strength of opposition in the ensuing parliament, a new device was practised—that of pricking Sir Edward Coke, and six other leaders of the Commons, sheriffs, to incapacitate them as members of the legislature.† But the device, as shallow as extraordinary, while it provoked a clamour against the court, only increased the popularity of the individuals, and encouraged others to occupy their ground, by the character and importance that it earned. It proved that the king and his advisers laboured under the vulgar error, that a few leading men created the opposition, when in truth it arose

* Fuller’s *Church Hist.* b. ix. p. 121; Ellis’s *Col. of Orig. Let.* vol. iii. p. 212 *et seq.*; Heylin’s *Life of Laud*, p. 141 *et seq.*; Rushworth, vol. i. p. 190 *et seq.*; Whitelocke, p. 2.

† Rushworth, vol. i. p. 197 *et seq.*; Strafford’s *Letters and Despatches*, vol. i. p. 30.

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from causes which these very men were indebted to for all their consequence, and which merely afforded a field for the exertion of talent that always resides in the community.

A parliament,
6th February,
1626.

Parliament met on the 6th of February, and Sir Thomas Coventry, who had superseded Williams, now in disgrace as lord keeper, burst forth, in his address to both houses by order of the king, into a strain of fulsome adulation towards the Throne, that will be found to form a striking contrast to the dignified speeches, on similar occasions, by the ministers of Elizabeth, particularly in the early part of her reign. But the oration of Sir Hineage Finch, Speaker of the Commons, on being presented for his majesty's approbation, is, if possible, still more remarkable for the extravagance of adulation, and, while it reflects light upon the character of the times, accorded as little with the principles of the constitution as with the real temper of the assembly he represented.*

All men of discernment had foreseen that, as a parliament was inevitable, so it would begin where the last had ended; and the Commons at once verified the prediction by entering upon an examination of public grievances; the evil counsellors about the king, misgovernment and misemployment of the revenue, the expenditure of the three subsidies, and three-fifteenths granted in the 21st of the late king, together with the miscarriage of the fleet to Cadiz, &c.; and they resolved upon appointing a committee for secret affairs, and another for grievances, to sit every Wednesday and Friday.

In the committee for grievances, the consultations regarded the amount of the revenue in lands, customs, impositions and casualties; the abatement of these by pensions, now amounting to 120,000*l.* per annum, lately, 80,000*l.*, and in Elizabeth's time only 18,000*l.*; by the increase of the household expenditure from 45,000*l.* to

* Rushworth, vol. i. p. 202 *et seq.*; *Old Parl. Hist.* vol. vi. p. 38 *et seq.*; Cobbett's *Parl. Hist.* vol. ii. p. 419 *et seq.*

80,000*l.*; by fruitless ambassadors with larger allowances than formerly; by treble increase of the privy purse; by double increase of the treasury of the chamber and great wardrobe; and by not using the best assignments, 'whereby the creditors were delayed in the payment, and the king surcharged in the price, the exchequer-man making his profit from the king's wants.'* Whoever attends to this expenditure, and reflects upon the sum demanded for the exigencies of the war, may be of opinion that the penurious grants of the Commons were capable of a very different construction from that generally put upon them: that it was not without reason that they remained deaf to the demands of the Throne, while they were not permitted to exercise any legislative function except that of voting away the public money.

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While the Commons were thus proceeding with their enquiry into grievances, and were preparing articles of impeachment against the duke as the author of their calamities, Charles, doubtless instigated by that minion, addressed a letter to the Speaker to hasten the supply, and sent a message to the same effect by the lord keeper, whom he also instructed to state the following reasons for an immediate compliance with his demand:—1st, That as the fleet was returned and the victuals consumed, the men must of necessity be discharged, and their wages be paid, otherwise a mutiny will assuredly follow: 2nd, That about forty ships are ready for a second voyage, and want only a few men and victuals, but that, without an immediate supply, the object must be abandoned: 3rd, That the army which is appointed in every coast must be disbanded, unless they be forthwith furnished with clothes and victuals: 4th, That, if the companies lately sent to Ireland be not provided for, they will raise a rebellion in that country instead of defending it: Lastly, That if this month, March, be neglected, the season for procuring

* Rushworth, vol. i. p. 207.

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healthful victuals will be lost.* Strong as the motives appear, by this representation, to have been for instantly granting a supply, reasons of a still higher nature forbade precipitancy. In considering a subject of this kind, the mind is apt to be overpowered by a sense of dangers which are supposed to be peculiar to the Crown from its demand of relief. But it ought never to be forgotten, that parliament was far more deeply interested to prevent some of these calamities than the sovereign. And it might have been argued, if the pecuniary difficulties of the state correspond with this account of them, there must have been not only an unnecessary expenditure, which ought to be enquired into and corrected, but a most unconstitutional spirit in the cabinet, that, unmoved by the condition of the exchequer, could defer a meeting of the national council for aid till delay were no longer practicable. The public grievances, already numerous and daily increasing, must owe their cure to parliament; no absurdity could exceed that of expecting it from their author; and if parliament have not the power her existence is a mockery. But in the present posture of affairs, every meeting of the legislature, and therefore, the only chance of success in any scheme for the reformation of abuses, depends upon the wants of the executive: Withdraw this cause of meeting, and all prospect of amendment is closed. If, then, the exigencies of government require supplies, let the prince, as the head of it, prove, by renouncing a system as destructive of the general prosperity as irreconcilable with the laws, that his demand proceeds not from views of vain-glory, but a steady attachment to his country. As, however, he evidently deems every departure from the present unconstitutional system such a derogation of majesty, that a voluntary amendment is not to be expected, parliament is bound to assert her own and the national rights in the only practicable way, by

* Rushworth, vol. i. p. 215; Cob. *Parl. Hist.* vol. ii. p. 48; *Old Parl. Hist.* vol. vi. p. 428.

aking supply the price of improvement. If, then, we due the liberty we have inherited, liberty by which we e distinguished above every other kingdom of Europe, ow is the time to show ourselves worthy of our inheritance, by extorting from the Throne some permanent security for our rights. Let the present system continue few years longer, and the flattering distinction will never descend to our posterity. But, after all, it does not appear hat money instantly voted could be levied in time for he alleged necessities of the state. A delay must inevitably occur, and the addition of a few days or weeks an be of little consequence to the public measures in relation to the external welfare of the kingdom, while it s of vital consequence to the domestic peace of the community. But how shall we be certain of the truth of the statement which has been made to us, since it is not too much to presume that the same principle that could lead to the hasty dissolution of the last parliament and delay the meeting of this, in order, apparently, that the necessity of supply might afford a ground for demanding it without a redress of grievances, could impose upon the legislature when assembled? We are assured that we shall be allowed to continue our session, and even to meet again for the settlement of domestic business, provided we immediately supply the necessities of the executive; but it would be contrary to every rational principle to expect that he who, even for the attainment of his own object, which he represents as so important, obstinately refuses to make concession, will adopt a different course when every personal motive is withdrawn; and it would accord as ill with the dignity as with the wisdom of parliament, patiently to wait for that as a boon which she is entitled to demand, and is yet denied, as a right.

The answer of the Commons to the message from the throne, while it was full of respect and expressions of attachment, intimated that they were engaged in an enquiry into the causes of his Majesty's wants and the

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people's griefs; and that enquiry must precede supply. This was delivered by the Speaker, to whom Charles observed that he liked the answer, but considered the mention of grievances as a parenthesis, not a condition; that, while he would be as happy as any of his predecessors to hear their grievances, provided they devoted themselves to redress, not enquire after them, he would not permit any of his servants to be questioned, much less those of eminent place, particularly Buckingham, whom he perceived they aimed at, though his popularity at the breach of the Spanish treaties was such that they knew not how to express it, and he had done nothing since to forfeit their good opinion, having, in all matters, strictly followed the royal directions. He concluded thus: 'I wish you would hasten my supply, or else it will be worse for yourselves; for, if any ill happen, I think I shall be the last that shall feel it.'*

Far from being awed, by this threatening language, into compliance with the demands of the court, the Commons assumed a still more decided tone. Mr. Clement Coke, son of the great lawyer, observed that it was better to die by an enemy than suffer themselves to be destroyed at home; and Dr. Turner, a physician, proposed certain queries to the house, founded upon common fame, or the general report and belief of the facts: 1st, Whether the duke, being Admiral, be not the cause of the loss of the king's royalty in the narrow seas? 2nd, Whether the unreasonable, exorbitant, and immense gifts of money and lands to the duke and his relations be not the cause of impairing the king's revenue and impoverishing the crown? 3rd, Whether the multiplicity of offices conferred upon the duke and others depending upon him, whereof they were not capable, be not the cause of the evil government of the kingdom? 4th, Whether recusants in general, by a kind of conniving,

* Rush. vol. i. pp. 216, 217; Cob. *Hist.* vol. vi. p. 429; Sanderson, *Parl. Hist.* vol. ii. p. 49; *Old Parl.* p. 30; Franklyn, p. 115.

not borne out and increased, by reason the duke's
 father and father-in-law were known papists? 5th,
 whether the sale of offices, honours, and places of judi-
 cial, with ecclesiastical livings and promotions—a
 great deal and hurt to the kingdom—be not through the
 duke?

These queries having been propounded, two questions
 arising from them were next proposed: 1st, Whether they
 should be debated in Parliament? 2ndly, Whether an
 application upon common fame, by a member of the
 House, be a parliamentary way? And the House
 resolved upon this resolution: 'That common fame is a good
 ground of proceeding for the House, either by enquiry
 or by presenting the complaint, if the House find cause,
 to move the King or the Lords.' It was remarked by
 Mr. Wentworth,* as well as by Noy, Selden, and other

is singular that, both in Rush-
 and the *Parliamentary His-*
is individual is represented as
 Thomas Wentworth, who had
 ricked sheriff, and was not a
 r of this parliament at all
 essay towards his Life, by Sir
 Radcliffe, in Appendix to
and Despatches, vol. ii. p. 430;
 so various letters in vol. i.
 e to this point, p. 29 *et seq.*)
 cause of the mistake has been
 ere was a Mr. Thomas Went-
 a very popular character, who
 ented Oxford in all the parlia-
 of James, and the first two of
 e. Sir Thomas, who was re-
 for Yorkshire, and he were
 ntly appointed to the same
 tees. The reader will find
 both included in the list of
 ers for the third parliament of
 , in Cobbett's *Parl. Hist.*, Sir
 as Wentworth as member for
 hire, Thomas Wentworth,
 as member for Oxford; and
 in the first parliament of
 e, I find by the Journals, that
 both were appointed of the
 committee, 21st June (I. C.
). In the Journals, Sir Thomas

is always distinguished from Mr.
 Wentworth, and the first does not
 appear in the transactions of the
 second parliament of Charles. The
 confounding of these individuals has
 led to much mistake about Sir Tho-
 mas's character, who, I shall after-
 wards prove, looked for place from
 the very beginning, and truckled to
 men in power, till he was forced into
 patriotism by the jealousy of Buck-
 ingham. He was a man of large
 estate, and, at the age of eighteen,
 married the Earl of Cumberland's
 eldest daughter. This lady died in
 July, 1622, and in February, 1625,
 he married a younger daughter of
 the Earl of Clare. From his great
 family connections, and his being
 representative of so large a county,
 he was, though he seldom spoke, a
 man of very considerable influence,
 and Buckingham was anxious to
 gain him. Williams applied to him
 during the first parliament of Charles,
 and received an unqualified assurance
 of support for the Duke; but the
 duke being jealous of Williams him-
 self, extended his jealousy to the
 individual with whom he was so
 intimately connected. At this time

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lawyers, in the course of the debate, that there is a difference between common fame and rumour; for that the general voice, *vox populi*, is common fame; and if this were not admitted as an accuser, great men would alone be safe from enquiry into their actions, as no private individual durst venture upon the task; and that, as the House of Commons is a house of information and presentment, not of definitive judgment, the individual is exposed to no injustice by the proceeding.*

Message to
the Com-
mons from
the king.

While the Commons were resuming their debate on the following day, a message was delivered from the king by Sir R. Weston, that his Majesty had noted the seditious speech of Mr. C. Coke, yet had forborne to adopt any course for the punishment of it, expecting that the House would of its own accord correct such insolence; but that his patience had only been productive of worse consequences in the strange conduct of Dr. Turner, who, without any ground of knowledge in him-

Wentworth reckoned Williams his very good friend, though he afterwards tried to ruin him (see *Letters and Despatches*, p. 28 *et seq.*; and particularly two letters from Wentworth to Weston, chancellor of the exchequer, pp. 34, 35; Hacket's *Life of Williams*, part ii. p. 17). Mr. Thomas Wentworth seems to have been a man of consequence. He was of the family of Wentworths in Northamptonshire, and was author of an esteemed work on the office and duties of executors. He studied as a commoner at Oxford, and then entered Lincoln's Inn. Having been regularly called to the bar, he was elected recorder of Oxford in 1611, and represented that town in all the parliaments of James I. and in the two first of Charles. He died in October, 1627. During his parliamentary career, he was repeatedly imprisoned for speeches that displeased the court; and the university of Oxford, offended at his stirring up the citizens against them, probably with cause, *discommoded* him for two

years, and registered him *pro intensissimo et inimicissimo viro universitatis Oxon.* He was at last obliged to quit the town through the influence of the university (Wood's *Athen. Oxon.* vol. i. p. 437).

I have just again carefully inspected the whole journals of the Commons, from the year 1614, when Sir Thomas first became a member (see his life by Sir George Radcliffe), and I found the one always distinguished as *Mr.* the other as *Sir Thomas* (Sir T.'s father did not die till the summer of 1614, after the dissolution of that parliament; but he was himself knighted in 1611), and that all the violently patriotic speeches were made by the first. It was he, not Sir Thomas, as has been erroneously supposed, who quoted Daniel xi. 20, 'A vile person,' &c. (Journals, 21st May, 1614, p. 183). I find them both often appointed to the same committee.

* Rush. vol. i. p. 217; *Old Part. Hist.* vol. vi. p. 431; Whitelocke, p. 3; Heylen's *Life of Laud*, p. 148.

self, or proof tendered to the house, had made an enquiry into certain charges, ostensibly against the Duke of Buckingham, but in reality against the honour of the late king, as well as the present. That to such an example he could not submit, though it were against one of the meanest of his servants, much less one so near himself; and he wondered at the foolish impudence of any man to suppose that he could be drawn, by any motive, to offer so great a sacrifice, much unworthy of the greatness of a king and the master of such a servant; and that therefore he could no longer use his wonted patience, but desired the justice of the house against the delinquents, which, he trusted, would remove from himself the necessity of putting forth his regal power for their punishment.*

The Commons continued their debates against the duke in spite of the message, though, to prove that their measures were tempered by regard for the necessities of the crown, they voted three subsidies and three fifteenths. But they withheld the bill till their grievances should be redressed. Having voted this supply, they resume their debate against the favourite.† Perfectly wedded to his servant, and conceiving every reflection against him derogatory to the divine right by which he pretended to govern, Charles adopted the unhappy expedient of lecturing the Commons in the lofty tone of an absolute monarch, by whose permission that body enjoyed their rights. For this purpose he summoned both houses to Whitehall, where, having thanked the Lords for their dutiful proceedings, he sharply rebuked the Commons, yet concluded with remarking that as their errors would be clearly demonstrated by the lord keeper, he still did not despair of the parliament's ending happily, though it had had some rubs.

Commons summoned to Whitehall that Charles might lecture them.

The lord-keeper, having partially travelled over the

* Rushworth, vol. i. p. 218; *Old Parl. Hist.* vol. vi. p. 432 *et seq.*

† *Id.* p. 40.

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ground which has been already so amply discussed, said, that as no prince was better affected to the right use of parliaments, so never king was more jealous of his honour, nor more sensible of the neglect and contempt of his royal rights, which he would not permit to be violated under any pretended colour of parliamentary liberty ; and that, while he did not forget that the parliament is his counsel, he understood the difference between counsel and control—between liberty and the abuse of liberty. The lord keeper farther stated that he was commanded to tell them that as his majesty knew better than any of them the integrity of the duke, and the hazards he had run, both in regard to his person and estate, for the service equally of the late and of the present king, so he is satisfied that the proceedings are levelled, not against Buckingham, but his own and his father's government ; and that, therefore, he commanded them to relinquish this unparliamentary inquisition, and commit to his care, wisdom, and justice, the future reformation of the matters they complained of; that his majesty had remarked how they had suffered the greatest council of state to be censured and traduced in the house, by men whose years and education were unequal to the consideration of such matters ; that foreign business had been entertained by them to the hindrance and disadvantage of negotiations ; that they had allowed his council, government, and servants, to be compared with times of most exception ; and that their committees had presumed to examine the letters of secretaries of state, nay, his own, and had sent a general order to his signet-office, commanding his officers to produce and exhibit, not only the records, but their books and private notes kept for his majesty's service ; conduct which he held to be as unsufferable as unusual. The lord keeper observed farther, that in regard to supplies they had promised to make his majesty safe at home, and feared abroad, yet that they had entertained this business in two days only out of twelve, and that the extent of the supply voted at last fell

so short of the occasion, that it merely exposed him to danger and dishonour, since, without better aid, he could expect nothing else than that the allies would disband and leave him alone to bear the fury of a provoked and powerful enemy ; whence both he and his people would be unsafe at home and despised abroad. But that if the supply were in itself inadequate, the manner of granting it was dishonourable, for though they had literally avoided the word *condition*, against which his majesty had warned them, when he told them of their parenthesis, yet they had actually imposed it, by delaying the bill till their grievances were both preferred and answered. That he therefore commanded them to determine by Saturday, whether they meant to increase the amount of their proposed grant, without a condition, either direct or indirect, as, in the event of their not coming to such a resolution, supply could not be expected in that way, nor they be permitted to continue longer together ; but that if they, without delay, voted a liberal sum, they should be allowed to continue together as long as the season permitted, and be assembled afterwards.

The lord keeper having finished his speech, Charles resumed his address, and stated that he had been the instrument of breaking off the treaties with Spain, when no man was so much a favourite with them as the individual they now appeared to aim at, though in reality the proceeding affected his own and his father's government. 'Now,' continued he, 'that you have all things to your wishes, and that I am so far engaged that you think there is no retreat—now, you begin to set the dice, and make your own game, but I pray you be not deceived ; it is not a parliamentary way, nor is it a way to deal with a king. Mr. Coke told you it was better to be eaten up with a foreign enemy, than to be destroyed at home. Indeed, I think it more honour for a king to be invaded and almost destroyed by a foreign enemy, than to be despised by his own subjects.'

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‘Remember that parliaments are altogether in my power for their calling, sitting, and dissolution ; *therefore as I find the fruits of them good or evil, they are to continue or not to be* ; and remember that if, in this time, instead of mending your errors, by delay you persist in your errors, you make them greater and irreconcilable ; whereas, on the other side, if you do go on cheerfully to mend them, and look to the distressed state of Christendom, and the affairs of the kingdom, as it lieth now by this great engagement, you will do yourselves honour—you shall encourage me to go on with parliaments, and I hope all Christendom shall feel the good of it.’*

As the supreme power of the state, parliament is not only entitled, but bound, to watch over the measures of the executive ; as disposing of the public money, she is imperiously called upon to enquire into the causes of every demand, and to be satisfied, not only of the necessity of it, and of the integrity of ministers to devote it to its legitimate object, but of their ability to employ it to the best advantage. No wise or good monarch will entrust his affairs to ministers who have lost the public confidence. But the lofty pretensions now made by Charles were inconsistent with every notion of authority, and consequently of utility, in parliament, and fully proved that he regarded the national council in no other light than as a convenient medium of procuring money to promote the designs, or gratify the passions of the court. The conduct of ministers was not liable to enquiry ; reformation of abuses, which had sprung from the executive, must be left to the sovereign alone ; the proceedings of the privy council, now styled the greatest council, in apparent contempt of parliament, whose claim to that title had hitherto been undisputed, were not even a proper subject of debate ; foreign business, for which supplies were demanded, was beyond the reach of the legislature ; and even the inspection of the

* *Old Parl. Hist.* vol. vi. p. 440 *et seq.* ; *Cob. Parl. Hist.* vol. ii. p. 56 *et seq.* ; *Rush.* vol. i. p. 221 *et seq.*

records, which, notwithstanding the assertion to the contrary, had never been denied in former times, was now declared to be an insufferable presumption : while supplies, on the necessity of which now depended every hope of parliaments, must be voted at the desire of the prince, without enquiry into those very measures which were alleged to have rendered them necessary, and before presenting the public grievances to the throne ; for to defer the first till the latter were redressed, was a dishonourable capitulation with the sovereign. In this light parliament was an absolute delusion ; but this assembly was not composed of materials to resign its authority to gratify the prince, who was no less unfortunate in the disclosure of his feelings than in the development of his principles of government. By stating that he thought it more honour for a king to be invaded, and almost destroyed by a foreign enemy, than to be despised by his own subjects, he distinctly declared that, in his opinion, he reigned for himself alone, not for the benefit of his people, whose utmost miseries, for they must suffer the evils to which he alluded, were, in his idea, trivial in comparison of his being crossed in his arbitrary measures.

In this light were matters viewed by the Commons, who immediately turned themselves into a grand committee, ordered the doors to be locked, and prohibited all members from leaving the house ; when they resolved to delay the consideration of all other business till they came to some determination on this, which virtually involved their existence as a legislative assembly. It was now perceived by the court, that the disclosure of such principles of government had been premature, or imprudent, and Buckingham attempted to explain away their effect. But the explanation did not divert the Commons from their purpose of a remonstrance, which was no sooner presented to the throne, than Charles desired them to adjourn for a week ; an injunction agreed to by a very narrow majority.*

* *Old Parl. Hist.* vol. ii. p. 454 *et seq.* ; *Cob. Parl. Hist.* vol. ii. p. 60 *et seq.* ; *Rush.* vol. i. p. 225 *et seq.*

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of Bristol's
case.Impeach-
ment of
Bristol.

During the recess, no means were neglected to stem the torrent which seemed ready to overwhelm the favourite; but the Commons inflexibly pursued their object, and he had to encounter an attack at the same moment from another quarter. The Earl of Bristol's treatment on his return from Spain, has been already mentioned. During the life of James, as he was confident of the concealed friendship of the monarch, he bore it with indifference, expecting, ere long, to be amply rewarded for his sufferings, and revenged on their author: even after the accession of Charles, he did not, for a season, despair of being restored to favour, and while that hope remained he was content to court his fortune by patient submission; but when he perceived that Buckingham's revenge was insatiable, because fears of the other's ascendancy disturbed his repose, and that the king, who resented the detection of his misstatements, was prepared to gratify the malignant passions of his favourite, by assisting him to destroy an enemy,—Bristol resolved to apply for justice to the laws of his country, and to let his adversary feel how much it was in his power to vex him. No writ on summoning the parliament had been sent to him as a peer of the realm; and he petitioned the Lords upon this breach of privilege, which he attributed to Buckingham, and craved to be heard against that powerful individual, whom he declared himself capable of convicting of many crimes in relation to the Spanish affairs. The writ was then sent, but with positive orders not to take his seat; and as Bristol evinced that he was resolved to vindicate his privileges, and impeach the duke,* the other determined, by first impeaching him, to anticipate the blow. Articles, therefore, to the following purpose, were charged against him in the king's name, by the attorney-general: That, though he knew the insincerity of the emperor, and of the king of Spain, in

* Rush. vol. i. p. 234 *et seq.*; Franklyn, pp. 121, 123 *et seq.*; *Old Parl. Hist.* vol. vi. p. 471 *et seq.*

regard to the restoration of the Palatinate; and of the latter in respect also to the match, he traitorously assured king James of the contrary, and protracted the treaties: That, to the injury of his master's affairs, he did not execute his commands, nor bring the king of Spain to a definite answer: That he persuaded king James not to break the treaties, and said that he was indifferent as to the issue, as he would make his fortune by the business: That he intended to introduce popery into England, and advised a toleration of it: That he was the cause of the prince's journey to Spain, and endeavoured there to prevail upon him to change his religion: That he advised that the elector's eldest son should be brought up in the emperor's court: That, if extraordinary diligence had not prevented it, he would have dispatched the disponsorios, notwithstanding the prince's commands to the contrary; and that his petition to the Lords, as it accused the duke, and his majesty by implication, of having deceived the parliament with an unfounded statement, was contemptuous and scandalous.*

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Bristol complained that this impeachment was a mere device to defeat his charge against the duke, which he preferred to the following effect: that Buckingham plotted with Gondomar to carry the prince into Spain, in order to pervert him to the Romish faith: That he laboured to accomplish this object during the prince's residence in the Peninsula, and flattered the Spaniards with the hope of attaining it, by testifying his own attachment to their religion, as he absented himself from service, in Bristol's house, frequented by all the other Protestants, and attended the Romish service, conforming to their rites and adoring their sacraments, a course which induced the Spaniards to rise in their demands: That he prevailed with the late king to write a letter to the Pope,

Bristol's
impeachment
of
Buckingham.

* *Old Parl. Hist.* vol. vii. p. 3 *et seq.*; *Cobbett's Parl. Hist.* vol. ii. p. 80 *et seq.*; *Rushworth*, p. 249 *et seq.*; *Whitelocke*, p. 4; *Franklyn*, p. 123 *et seq.*

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styling him, *Sanctissime Pater*: That the pope being apprised of the duke's inclinations in regard to religion, sent him a bull, encouraging him to pervert the prince: That his behaviour in Spain so incensed the Spanish king and his ministers, that they refused to have farther correspondence with him, whence the duke, perceiving that the match would now be disadvantageous to him, endeavoured to break the treaty, and for that purpose concealed matters of importance from the prince, and used his highness's letters contrary to his intentions: That he had, in a great measure, been the cause of the ruin of the prince Palatine and his family: That he had abused parliament by a false statement of facts, and had wronged the earl in his honour, by unjust aspersions, and in his liberty, by undue courses through his power and practices; that his debaucheries in Spain (to promote which he had used his influence with the Spanish king to procure favours and offices, and bestowed them upon the most unworthy objects) had brought a reproach upon the English nation; and that the late king had promised to hear the earl against the duke, but that the circumstance having reached the favourite's ear, the king not long after sickened and died.

Bristol also preferred articles against Lord Conway, who, he alleged, had, as the duke's creature, done him particular injuries.*

In the ordinary quarrels of life, neighbours seldom remain neutral, and, to buoy up the party whose cause they espouse, they generally lose sight of his particular faults; but, when a nation suffers under the undue power of an odious court minion, an accusation against him by a rival, who is exposed to oppression for endeavouring to supplant him, is heard with particular favour. The accuser is, however unworthy in himself, a useful instrument of public justice; he is encouraged in his task by the

* *Old Parl. Hist.* vol. vii. p. 12 *Rush.* vol. i. p. 254 *et seq.*; *White-*
et seq.; *Cobbett's*, vol. ii. p. 86 *et seq.*; *locke*, p. 5.

pular voice, and the people, making his cause their own, overlook his faults. This feeling operated powerfully in the case of Bristol, while the part which he and his friends afterwards took in the contest with the long parliament appears to have induced certain historians to vindicate his whole conduct in the Spanish treaties. But he seems to have been actuated merely by motives of self-aggrandizement, and to have been no less ready than the duke, from whom he had a prospect of supplanting in court favour, to make the greatest national sacrifices to complete the match, which promised to procure for him the highest favour of the English court. One of the greatest evils which apparently could befall the nation, or even the prince himself, was his conversion to the popish faith. If this, Bristol appears, by the opening article of his impeachment of the duke, to have been fully sensible, yet he admits in his defence, that having learned from Gondomar, that there was a general opinion of the prince's having come to Spain to change his religion, he took advantage of a private opportunity to throw himself at his highness's feet, and request to know the truth of the report, pledging his fidelity to the secret, and promising that he should always serve his highness, and labour to advance his and the king his father's affairs, with as much fidelity and honesty as any Catholic whatever. It is easy to make a distinction between advising a measure and consenting not to obstruct what a prince has already determined upon; but the distinction would at once destroy the security arising from the responsibility of ministers, while it must immediately occur that every good subject, and much more a confidential servant of the crown, is bound to avail himself of his opportunities to dissuade his prince from an act likely to involve, not the country only, but the prince himself in the greatest calamities. The most insidious promoters of mischief are they who sound the prince's secret inclinations, which, as he is reluctant to communicate them, might wither away in his own bosom

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from want of encouragement, and then affect the merit of advancing, out of unlimited devotion, an object that they do not quite approve of. Charles, in a letter which he addressed to Bristol, directly accused him of having repeatedly urged him to embrace the Catholic religion: but the proceedings of this prince, in regard to the Spanish treaty, and this individual in particular, were characterised with such insincerity, that it is impossible to determine what degree of credit is due to the statement; and though it is amazing to think that a person in his elevated sphere should have had the frontless assurance to accuse one of his subjects to his face of such an offence, without foundation, yet it ought never to be forgotten that the continued persecution of Bristol is attributable to his having refused to sign an acknowledgment of his guilt (even James is alleged to have said to the duke in regard to this earl, 'I were to be accounted a tyrant to enjoin an innocent man to confess faults of which he was not guilty'*), and that Charles was guilty, in this affair, of other misstatements equally gross. The jealousy between the duke and Bristol had precluded the latter from the secret councils of the prince, and strict injunctions were laid upon James, by his son and favourite, not to disclose their dispatches to the ministers at home, amongst whom Bristol had a powerful party. They had proposed to that monarch to acknowledge the spiritual supremacy of the pope; they had consented to a toleration, and, lest their powers should be disputed, or a confirmation of the terms be afterwards opposed, they obtained a writing under James's hand, of their own dictation, to ratify any conditions to which they should agree.† Under such circumstances it could scarcely have

* See Letter in Cabala, p. 203; see Bristol's defence in Rush. vol. i. p. 200 *et seq.*, and all papers there relative to the Spanish treaties; *Old Parl. Hist.* vol. vii. p. 21 *et seq.*; Cobbett's, vol. ii. p. 134 *et seq.*; all the papers in Hardwicke's *Col.* vol. i.

relating to this business. See Howel's *Familiar Letters*, p. 116 *et seq.*; Cabala, p. 95 *et seq.*; also p. 3 *et seq.*, 26 *et seq.*

† Hardwicke's *State Papers*, vol. i. pp. 410, 417, 419.

been expected that Charles would have, on the one hand, let loose all the power of his office to ruin Bristol on this point, and, on the other, have declared his approbation of Buckingham's conduct, affirming that, of his personal knowledge, he could vindicate his minion from most of the charges, while he never hesitated to appeal to his own conduct in the Peninsula as irresistible proof of his constancy in the national faith.*

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These impeachments were followed by one against Buckingham, at the instance of the Commons, charging him with the sale of offices, and the accumulation of offices in his own person; with having purchased, at the king's expense, the offices of admiral, warden of the cinque ports, and constable of Dover; with the neglect of his duty and trust as admiral, so that pirates infested the very coasts, and trade had decayed; with having caused the ship *Peter* of Newhaven to be arrested, and jewels to the value of 20,000*l.* which he applied to his own use to be taken from her, and having afterwards stayed the ship, which had provoked reprisals on the part of the French; with the extortion of 10,000*l.* from the East India Company, by laying an embargo on their ships; with having consigned over the *Vanguard* and six merchant vessels to the French king, to be employed against the Protestants of Rochelle, and having forced the owners into acquiescence; with the sale of honours for his profit, and having threatened Lord Roberts to make a gift of 10,000*l.* for his title; with the sale of the office of treasurer to Lord Manchester for 20,000*l.*, and that of master of the wards to Sir Lionel Cranfield for 6,000*l.*; with having procured titles of honour for his allies, and pensions to support them; with having embezzled the king's money, and obtained grants of Crown lands to an immense value; and lastly, with having twice administered

Impeach-
ment of
Bucking-
ham by the
Commons.

* Mr. Hume had not, unfortunately, the benefit of Lord Hardwicke's *State Papers*, which were not yet published when he wrote his history.

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a potion to the late king a few days before his death, not only of a nature unknown to the physicians, surgeons, and apothecaries, but against a positive order by the first, that nothing should be given at the interval he took advantage of; and farther, with having applied a plaister to his breast of unknown qualities, both of which, potion and plaister, were attended with the worst symptoms, 'a transcendent presumption of dangerous consequence.'*

Sir J. Elliot and Sir D. Diggs committed to the Tower.

These charges were of so aggravated a nature, that the king should have himself been as anxious as any of his subjects for a trial of the accused. Powerful as was the influence of the Crown in the House of Lords, where there were so many newly created nobility, and the bishops could be depended on, a conviction could scarcely have been expected from the clearest evidence, and innocence had nothing to dread. If, therefore, Charles supposed his prime minister guiltless of the crimes of which he stood impeached, it essentially concerned his own honour, as well as Buckingham's, that his title to the office should be vindicated by a refutation of the charges; but, far from pursuing so obvious a course, Charles committed the two leading men to the Tower, who managed the impeachment, and going in person to the House of Lords, proposed to clear his favourite of every charge by his own testimony. This indecorous proceeding occurred on the very day on which the Commons had moved the Lords for the duke's commitment to the Tower till the issue of his trial—a motion, however, which they rejected.

The commitment of their members to the Tower for discharging their duty, was regarded by the Commons as such an infringement of their privileges, that they determined to proceed no farther in public business till their members were restored; turned the house into a grand

* Articles in Rush. vol. i. p. 304 *et seq.*; *Old Parl. Hist.* vol. vii. p. 51 *et seq.*; Cobbett, vol. ii. p. 103 *et seq.*; Whitelocke, p. 5 (see these

authorities about the potion given to King James: the 1st in p. 350; 2nd at p. 114 *et seq.*; 3rd at p. 117; 4th at p. 6 *et seq.*).

committee, to consider of the most judicious means of asserting their rights, and ordered that no member should quit the house. Upon this Sir Dudley Carleton, a creature of Buckingham, observing their unusual, and, as he termed it, sullen silence, addressed them in language which, however congenial to the sentiments of his master, was repugnant to the first idea of a parliament, while it affords evidence of the estimation in which the English government was held, that ought to have saved Mr. Hume from the erroneous view he entertained. 'I beseech you, gentlemen,' says he, 'move not his majesty with trenching upon his prerogatives, lest you bring him out of love with parliaments. You have heard his majesty's often messages to you, to put you forwards in a course that will be most convenient. In those messages he told you that if there were not correspondency between him and you, he should be enforced to use new counsels. Now I pray you, consider what these new counsels are, and may be ; I fear to declare those that I conceive. In all Christian kingdoms you know that parliaments were in use anciently, by which their kingdoms were governed in a most flourishing manner, until their monarchs began to know their own strength, and seeing the turbulent spirit of their parliaments, at length they, by little and little, began to stand upon their prerogatives, and at last overthrew the parliaments throughout Christendom except here only with us.

'And indeed you would count it a great misery if you new the subject in foreign countries as well as myself ; to see them look, not like our nation with store of flesh on their backs, but like so many ghosts, and not men, being nothing but skin and bones with some thin cover to their nakedness, and wearing only wooden shoes on their feet ; so that they cannot eat meat, or wear good clothes, but they must pay and be taxed unto the king for it. This is a misery beyond expression, and that which yet we are free from. Let us be careful, then, to preserve the king's good opinion of parliaments, which bringeth this

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happiness to this nation, and makes us be envied of all others while there is this sweetness between his majesty and his Commons, lest we lose the repute of a free-born nation by our turbulency in parliament. For, in my opinion, the greatest and wisest part of a parliament are those that use the greatest silence, so as it be not opinionatory or sullen, as now we are by the loss of these our members that are committed.' He then stated the alleged reasons for the commitment of the members; but before proceeding to mention them, it may not be amiss to observe, that the house were so indignant at a speech by a servant of the Crown, which struck at the very vitals of their privileges as a legislative assembly, that they cried out, 'To the bar! to the bar!' and that he very narrowly escaped the disgrace of asking pardon on his knees for his profligate insolence; but his loyalty had its due reward elsewhere, for he was shortly afterwards created a peer.*

Elliot and
Diggs li-
berated.

The ground alleged for the commitment of Sir Dudley Diggs was, that in speaking of the plaister, he had said that he forbore to speak farther out of regard to the king's honour; that for Sir John Elliot's, that he had overstept the bounds of his commission in asperity against the duke. The last, the Commons justified as not having exceeded his powers; the first, as never having uttered the words imputed to him. Both members were liberated, and Charles declared himself satisfied in respect to the first; but Buckingham, whose interest it was to make his master a party to his quarrel, still declared, in the upper house, that language uttered by Diggs was construed treasonable, and thirty-six peers entered into a solemn protestation that they heard none of the words attributed to him. This quashed the business.†

Bucking-
ham elect-
ed chancel-
lor of Cam-
bridge.

While the favourite stood charged with those crimes, the chancellorship of Cambridge became vacant by the

* Rushworth, vol. i. p. 357 *et seq.*; *et seq.*; Franklyn, p. 179 *et seq.*; *Journals*, 800-1. Rush. vol. i. 360-1.

† Cobbett's *Parl. Hist.* vol. ii. p. 119

death of the Earl of Suffolk; and, as it was imagined by Buckingham and his master, that his election to that office would be one of the most honourable testimonies of worth and integrity which the nation could afford, and would buoy him up under the weight of so many charges in parliament, all the influence of the Crown was exerted in his favour; and considering how the university was constituted (Dr. Maw, the king's chaplain, as master of Trinity College, supplied him with no fewer than forty-three votes, above a third of the whole in his favour), it is not so wonderful that he should have been successful, as that Lord Thomas Howard, son of the late chancellor, should have mustered a hundred and three votes against the duke's hundred and eight. It is even alleged, that had Lord Thomas been more hearty in the cause, he might have carried it.

The Commons, considering this election as a reflection against them, which in truth it was intended, resolved upon writing to the university against the measure; but Charles, pronouncing this a violation of that learned body's privileges, sent a message to the lower house, by Sir Richard Weston, to abstain from interfering. The Commons defended their conduct in an answer to the king, and received a still more peremptory reply, while his majesty himself dispatched a letter to the university, expressive of his warm approbation, and of his intention to make a proper return for such a proof of loyalty.*

Buckingham, on the 8th of June, presented to the peers his answer to the impeachment of the Commons, and moved that it might be immediately transmitted to the lower house for their reply; but on the very next day, Friday, before the answer could be transmitted, the king sent a peremptory message to the Commons to grant the supply immediately and unconditionally, that it might pass the house by the end of the next week at farthest,

His answer
to the
Commons'
impeach-
ment.

* Rushworth, vol. i. p. 371 *et seq.*; Whitelocke, p. 7 (see original letters on this subject in Ellis's Col. vol. iii. p. 228 *et seq.*).

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as else he would be obliged to take other resolutions. The duke's answer was transmitted to the Commons on the 10th; and they seem to have lost no time in preparing their reply: but as it clearly appeared, from the royal message, that it had been resolved upon in the cabinet to frustrate their proceedings, they, in order to preserve their privileges, to divert the king from so invidious a measure, and to remove the alleged author of their grievances from the power to augment them, resolved to petition the Throne; and in the meantime, they presented a petition, which they had been long preparing, against the employment of recusants in the public service, with a list appended of persons in offices of trust who were either avowed or suspected Papists. From the repeated professions of the king on this subject, the petition ought to have been unnecessary. From the persecution of Bristol, upon the pretended ground of his having advised a toleration, consistency should have recommended an immediate compliance. Yet the petition was neither consentaneous to the feelings nor the future government of Charles.*

On the 14th, the Commons, in answer to the royal message, presented their petition, in which they prayed for liberty to proceed in the discharge of their duty, and craved that Buckingham might be during the impeachment removed from the royal presence; but the petition was so resented, that, though no bill of importance had been passed into a law, and both houses endeavoured to prevail with the king to drop his purpose, he determined upon an immediate dissolution. To the Lords who waited upon him to intercede for leave to continue a little longer together, he exclaimed, 'Not a minute,' and instantly completed his purpose.†

Parliament dissolved.

The Commons' remonstrance.

The Commons, apprised of his intention, hastily prepared a remonstrance: 1st, against the duke; 2nd, against

* Rushworth, vol. i. p. 390 *et seq.*; *Old Par. Hist.* vol. vii. p. 284 *et seq.*; Franklyn, p. 199; Sanderson, p. 58; Rush. vol. i. p. 195 *et seq.*

† Cob. *Par. Hist.* p. 168 *et seq.*

levying tonnage and poundage without a legislative enactment; and lastly, against a breach of their privileges, as well as of the general liberty, in sending one of their number, Glanvil, an eminent counsel, and one of the managers of the impeachment, to a post in the navy, for his parliamentary hostility to the favourite. Charles, on his part, issued a proclamation to justify his government, and another ordering the remonstrance of the Commons, which had been drawn more with a view to the public than from any hope of changing the conduct of the prince, to be burnt.*

The chief business agitated in this parliament was the impeachment of the duke; and in order to bring down the proceedings in a connected chain, we have hitherto forborne any account of or remarks upon the answer. It was drawn by Sir Nicholas Hyde, who was shortly afterwards rewarded for it with the office of chief justice; and to say that it is plausible, may reflect some credit on the ability of the advocate, but as the case hinged upon matters of fact, which the favourite either absolutely denied, or explained away by averments involving new facts—whence it is self-evident that his guilt or innocence could only be ascertained by a fair and open trial—the answer, unsupported as it was by evidence of any kind, could afford no satisfaction to any rational mind, particularly to one in the slightest degree acquainted with judicial proceedings. We must therefore dissent from the sweeping assertion of the eminent author to whose work we have so often alluded,—that all ‘the articles appear, from comparing the accusation and reply, to be either frivolous or false, or both.’ Unfortunately for this statement, it is disproved by this writer’s own account of one transaction, the loan of ships to France, which constitutes a principal article of the impeachment. Whoever reflects on the subtrefuges of state criminals, especially of those who are

Observations on the impeachment.

* Rush. vol. i. p. 400 *et seq.*; *Old Parl. Hist.* vol. vii. p. 300 *et seq.*; Cob. vol. ii. p. 193 *et seq.*

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supported with the whole power of the executive, together with the numberless difficulties that occur in establishing by evidence in a court of justice facts generally known, cannot be surprised at counter assertions and denials. But, if ever a candid confession was to have been expected, it regarded the loan of ships—a transaction so public, and of which the proof was so simple, that a denial almost implied an insult to his judges; yet the duke had the effrontery to state that he never imagined the ships were to be employed against Rochelle; that he had been overreached by the French court, who pretended a design against Genoa; and that when he discovered the imposition, he laboured to frustrate it, and had, by his measures in favour of that town, hitherto saved it from destruction!* The immense property he had acquired, the numerous offices accumulated in his own person and bestowed upon his kindred, it was impossible to deny, and therefore he pleaded duty, &c., for the acceptance. It may be amusing to the reader to learn the cause of the complaint; and, therefore, we subjoin in a note a list of his titles and offices,† while we, in this place, present a picture of his rapacity in the language of Mr. Sherland, one of the managers of the impeachment. He computed the money and value of the Crown lands engrossed by the favourite at 284,395*l.*, ‘besides the forest of Layfield, and besides the profit made out of the thirds of strangers’ goods, and the moiety of the profit made out of the customs of Ireland.’ ‘This,’ continues Sherland, ‘is a great sum in itself, but much greater by many circumstances; if we look upon the time past, never so much came into one

* See his answer in Rushworth and the *Parl. Histories*.

† Duke, Marquis, and Earl of Buckingham, Earl of Coventry, Viscount Villiers, Baron of Whaddon, Great Admiral of England and Ireland, &c. &c. &c., General-Governor of the seas and ships of the same, Lieutenant-General Admiral, Captain-General and Governor of his

Majesty’s fleet and army, &c.; Master of the Horse, Lord Warden, Chancellor, and Admiral of the Cinque Ports, &c., Constable of Dover Castle, Justice in Eyre of the Forests of Chases on this side the Trent, Constable of the Castle of Windsor, Gentleman of the Bedchamber, Knight of the Garter, Privy Councillor, &c.

man's hands out of the public purse: if we respect the time present, the king never had so much want, never so many foreign occasions, important and expensive; the subjects never have given greater supplies, and yet those supplies unable to furnish those expenses. But, as these circumstances make the sum greater, so there be other circumstances which make it less. If it be compared with the inestimable gain he hath made by the sale of honours and offices, and by projects hurtful to the state, both in England and Ireland, or if it be compared to his profusion, it will appear a little sum. All these gifts, and other ways of profit, notwithstanding, he confessed before both houses of parliament that he was indebted 100,000*l.*! If this be true, how can we hope to satisfy his prodigality? If false, how shall we hope to satisfy his covetousness? And, therefore, your Lordships need not wonder if the Commons desire, and that earnestly, to be delivered from such a grievance.*

But the last article of the impeachment was of such a nature that, to our apprehension, an honest man would have courted enquiry and sued for a trial with more earnestness than he avoided it: that though the late king's sworn physicians publicly intimated to all his majesty's attendants that no meat or drink should be given to him within certain periods, Buckingham, without the knowledge of the physicians, gave his master a potion during those intervals, not compounded by the sworn surgeons or apothecaries, but composed of ingredients unknown to them; and besides, contrary to the orders of the physicians, applied to his majesty's breast and wrists plaisters of an unknown quality, which potion and plaisters were attended with the most injurious consequences. 'This medicine,' says Wandesford, one of the managers of the impeachment, 'found his majesty in the declination of his disease, and we all wish it had been left so; but his better

* Rush. vol. i. p. 340.

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days were shortly turned into worse, and instead of health and recovery, we hear by good testimony, that which troubles the poor and loyal Commons of England, of great distempers, as droughts, raving, fainting, an intermitting pulse—strange effects to follow upon applying a treacle plaister. But the truth is, testimony tells us that this plaister had a strange smell and an invective quality, striking the malignity of the disease inward, which nature otherwise might have expelled; add to this the drink twice given to his majesty by the duke's own hand, and a third time refused, and the following complaint of that blessed prince, the physicians telling him, to please him for the time, that his second impairment was from cold taken, or some other ordinary cause: 'No, no,' said his majesty, 'it is that which I had from Buckingham.'* Wandesford might also have enlarged upon the appearance of the body after death: 'it swelled very much,'† says Whitelocke; and the statement is corroborated by other testimony. This assuredly presents the favourite's conduct in no very favourable light; but his answer, if true, at once removed every idea of guilt in a moral sense, however his presumption in applying a new medicine without an order of council might have incurred censure in a legal one; that his late majesty, knowing how much he had himself been relieved by a plaister and posset, which had been recommended by a physician, insisted upon trying them; that the posset had been allowed by some of the physicians, after having been tasted by part of them, as well as by others of the bedroom; that the plaister was also allowed; and that Buckingham, having heard a rumour ascribing injurious effects to his prescriptions, and accusing him of having administered the medicine without the consent of the physicians, mentioned it to the late king on his deathbed, who exclaimed, 'They are worse than devils who say so.' But, if this were a correct statement, why did he, to the immi-

* Rush. vol. i. p. 352.

† See a former note on this point.

nent hazard of his master's affairs, drive on the dissolution of parliament, to prevent a trial? Situated as he was, commanding most of the witnesses, he could have, in that case, had nothing to dread; and the result, by clearly exposing the malice of his enemies on so important a point, would have enabled him to brave them on other grounds, and gone far to have obtained for him the public support. He durst not, however, rely upon the testimony of the physicians, who are said, by Whitelocke, to have given it to the committee of the lower house, conformably to the facts charged by the Commons. With regard to Charles, he appears, in the whole of his connexion with Buckingham, to have laboured under a species of infatuation. Listening to no council but his, and imagining that the general hostility was a mere consequence of his own partiality for that individual, he thought himself bound in honour to support his creature against the popular clamour which apparently aimed at directing him in the choice of a servant; and in his resentment of the public interference with his concerns on that supposed ground, he remained deaf to complaint against him on any other. In this instance, he seems to have regarded the whole as the result of a conspiracy to destroy his confidential servant, which could only be defeated by stopping the trial; and it may be inferred, from the language falsely imputed to Diggs, and the manner in which it was prosecuted, that the duke had artfully suggested to Charles that the object was to strike at royalty itself through the person of the king's favourite.

Credulity has been so often imposed upon by accounts of the deaths of princes, that every tale of that nature ought to be listened to with the utmost caution. But a wide distinction should be drawn between a popular rumour and a specific charge by the legislative assembly of a great country; and considering the profligate character of this favourite, and the relation in which he had stood to the late king—considering that one of that

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monarch's minions had committed the most deliberate murder to save himself from the detection of some secret crime; it is not wonderful that he, the successor of that convicted murderer, should, to rescue himself from destruction, have perpetrated a similar deed. Modern authors, however, availing themselves of the ridicule with which vague reports of the deaths of princes are now generally and justly regarded, have treated the story with a sneer, as the offspring of credulity in a benighted age; and the vulgar reader, who would greedily swallow a silly rumour of the passing hour, partly recoils from enquiry in confusion, partly feels the triumph of improved intelligence in smiling at the easy faith of former times. But whoever coolly weighs all the circumstances may be of opinion that, though the matter be now beyond the reach of certainty, it was not without reason the enlightened men of that age were discontented at being so unconstitutionally defeated in their attempt to bring it to a trial.*

* I would much rather have avoided this subject, but it was impossible. The cause of the heat with which it has been taken up by writers is, that Charles was subsequently implicated; but I am clearly of opinion that there is no ground for suspecting him; it is not like his character, he had no motive for his father's immediate removal, and, in the nature of things, must soon have succeeded. I do not think that Buckingham's character, considering all matters (I allude to a former note), can suffer by the imputation. Clarendon says that the whole matter was enquired into during a time of great licence, and no criminality was discovered; but I know of no investigation except that which was stopped by the dissolution of this parliament (see his *State Papers*, vol. ii. p. 392 *et seq.*). Eglisham, who had been above ten years one of King James's physicians, was obliged to abscond for alleging that his majesty had been poisoned; and the following is his account of the matter, published by himself:

'The king being sick of a certain ague—and that in the spring was of itself never found deadly—the duke took the opportunity, when the king's doctors of physic were at dinner, upon the Monday before the king died, without their knowledge or consent, and offered to him a white powder to take, the which he a long time refused; but, overcome with his flattering importunity, at length took it in wine, and immediately became worse and worse, falling into many swoonings and pains, and violent fluxes of the belly, so tormented that his majesty cried aloud of this white powder, "Would to God I had never taken it, it will cost me my life!" In like manner also the Countess of Bucks, my lord of Bucks' mother, upon the Friday after, the physicians being also absent, and at dinner, and not acquainted with her doings, applied a plaister to the king's heart and breast, whereupon he grew faint, and short-breathed, and in a great agony. Some of the physicians after dinner returning to see the king, by

circumstance may now be shortly mentioned, which postponed to more important matter. The Earl of

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Earl of
Arundel's
case.

ensive smell of the plaister, and something to be about him to him, and searched what it be and found it out, and ex- l that the king was poisoned. Buckingham, entering, com- l the physicians out of the aused one of them to be com- prisoner to his own chamber, urther to be removed from quarrelled also with others of g's servants in his sick ma- own presence, so far, that he to draw his sword against n his majesty's sight. And mother, kneeling down be- is majesty, cried out with a face, "Justice! justice, sir! I d justice of your majesty." His y asked for what? "For that their lives are nowise sufficient y, for saying that my son and poisoned your majesty." "Poi- me?" said he, with that turn- nself, swooned, and she was d. The Sunday after his ma- ied, and Buckingham desired ysicians who attended his ma- o sign, with their own hands, of testimony, that the powder he gave him was a safe and medicine, which they refused. igham's creatures did spread a rumour in London, that igham was so sorry for his y's death, that he would have himself if they had not hin- him,' &c. The author shows ie favourite felt nothing; and rious that another account, al- er unsuspicious as against the confirms this as to the clamor- ture of his grief on James's Laud was preaching before rds of council, when, 'before s come to the middle of his i, the certainty of the king's more generally known amongst the confusion which he saw faces of all the company, his riefs, and the dolorous com- made by the Duke of Buck-

ingham, made him leave the pulpit, and bestow his pains and comforts where there was more need' (Hey- len's *Life of Laud*, p. 131). If his grief were violent, it did not last long. But to return to Eglis- ham's account: 'Immediately after his ma- jesty's death, the physician who was commanded to his chamber was set at liberty, with a caveat to hold his peace; the others threatened, if they kept not good tongues in their heads. But, in the meantime, the king's body and head swelled above mea- sure; his hair, with the skin of his head, stuck to the pillow' (his skin was unnaturally soft at all times, see Weldon's description), 'and his nails became loose upon his fingers' (*Harl. Miscel.* vol. ii. p. 71). Eglis- ham's account is thought to be discredited by the acrimony with which he wrote; but let it only be supposed that he, a sworn physician of King James, is obliged to fly his native country and reside for years abroad, for giving a faithful testimony, and say, is it wonderful that he should treat the subject with asperity? (See Kennet, vol. ii. p. 790.) But there might be another objection, that his description of the appearances in Marquis Hamilton's case seems to be exaggerated in regard to the swell- ing; perhaps, however, it may be thought, that the horror at such un- natural appearances might mislead even a physician; and there are many who use strong language to convey a picture of what they keenly feel, without intending to mislead. Sanderson broadly accuses Eglis- ham of writing as many lies as lines, and of having offered to Sir B. Gerbier to publish a recantation for four hun- dred guilders, 'of which the duke bid Gerbier join knavery together, and spit venom till they split, and he would pay for printing that also.' But Sanderson's testimony is none of the best on any point; and here his story is incredible. For he says Ger-

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Arundel had been confined in the Tower, in consequence of his son's marriage with the Duke of Lennox's daughter. But, though confinement was as great a breach of the privileges of the upper house, as of the rights of an English subject, that passive branch of the legislature too tamely submitted to it, till the release of Sir Dudley Diggs and Sir John Elliot roused them to greater decision. They then stoutly petitioned the Throne for his liberation; and their efforts to vindicate their rights were successful, though not without many evasions by Charles, who never conceded one point with grace.* But, though their exertions to assert their privileges were not unavailing, they

bier, whose 'testimony he pronounces odious to any man,' told him! Now would the duke, who was so far from despising the charge against him, that while he avoided a real trial, he purposely underwent the mockery of one, to calm the public feelings, by causing an information to be filed against himself in the Star Chamber (nay, such was his soreness on this head, that he rose *nine times* in one morning in the House of Lords, to fasten the charge of treason upon Diggs for the imputed offence of having implicated the king as an accessory—Abbot's *Nar.* in Rush. vol. i. p. 450), have neglected so noble an opportunity of vindicating his character? Or would Gerbier, if he did speak at all after this alleged rebuff, have only stated the fact to Sanderson, who had such an antipathy to him? (Sanderson's *James I.* p. 593.) But Eglisham was not the only physician who thought James poisoned. The rest of the medical attendants appear to have entertained the same opinion, and Dr. Craig, Bishop Burnet's uncle, was disgraced for having spoken to that effect. Sanderson alleges, as the cause of Craig's talking thus, that he was, from the death of that king, discontented with the court. But why was he discontented? Mr. Mead's letter to Sir M. Stuteville, dated the 9th April, 1625, the 13th day after the death of James, affords some in-

sight into the matter: 'The Countess of Buckingham, the Tuesday before he' (King James) 'died, would needs make triall of some receipt she had approved; but being without the privitie of the physitions, occasioned so much discontent in Dr. Craigge, that he uttered some plaine speeches, for which he was commanded out of the court; the duke, as some say, complaining to the sick king of the words he spoke' *Original Letter*. Manuscript 389, p. 420). Why was Eglisham, who had held the office of physician to the monarch for upwards of ten years? The very fact of their being in that station is *prima facie* evidence of good character (see former note on the death of James, and Howell's *Fam. Let.* p. 157). By the way, those who have read the memoirs of the Princess of Bareuth, which are admitted to be genuine, will not be disposed to regard the popular stories about the deaths of princes, or attempts against their lives, as so utterly ridiculous. We, happily, live in a country and state of society where assassination may proudly be called unknown; but we are not warranted in judging of other times by the standard of ours.

* Rush. vol. i. p. 363 *et seq.*; *Ayc. MSS.* Brit. Mus. No. 4161, vol. ii.: *Let.* by Mr. J. Mead, March 16th, 1625–6, 26th May, 1626.

were productive of little benefit to the injured earl, who immediately after the dissolution was commanded to confine himself to his house. He does not appear to have entered into a legal contest for the recovery of his liberty. Bristol was also committed to the Tower, and such was the influence of Buckingham, that, according to a keen royalist writer, Sanderson, he corrupted Bristol's creatures to render him copies of all his papers during the mutual impeachments. *

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Having broken with parliaments, it became necessary for the king to try the effect of the new counsels he had threatened. The customs, including impositions, were continued by an order of council; a benevolence was applied for from some; a loan from others, though the latter as the most effectual, ultimately superseded the former; and the different port-towns, with the assistance of the counties adjoining, were severally required to provide a certain number of ships—the origin of that oppressive tax of ship-money, which forms so prominent a feature in the history of this reign. The tone of the court corresponded with its arbitrary measures. The deputy-lieutenants, and justices of peace in Dorsetshire, having received orders to furnish ships from Pool, Weymouth, and Lyme, and for that purpose to levy contributions upon the adjacent counties, excused themselves to the council-table, on the principle of the case being without precedent; but they were answered that the occasions of state, and the defence of the kingdom in times of extraordinary danger, were not to be guided by precedents. The city of London did not absolutely oppose the measure, yet pleaded for the abatement of the demand against them of twenty ships, to ten, and likewise alluded to the unprecedented nature of the measure. But their excuse was insolently rejected. They were told that the precedents of former times were obedience,

The new
counsels
adopted by
Charles,
benevo-
lence, loan,
ship
money, &c.

* *Hist. of Charles I.* p. 59.

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not direction, and that there wanted not precedents for the punishment of those who disobeyed his majesty's commands. An order was issued at the same time, not to receive petitions and pleadings against the commands of the king, as they had a tendency to produce danger and prejudice to the commonwealth. It would have been some consolation to the people for this breach of their laws, had the armament so illegally fitted out afforded protection to commerce, the pretext for which it was demanded. But, to add to their calamities, the Earl of Denbigh, with a hundred sail under his command, allowed English vessels to be captured in his view—because, forsooth, he had no commission to fight; and when merchantmen took vessels belonging to the enemy, they were adjudged not to be prizes, and immediately released. Extraordinary commissions, with powers of martial law, were at the same time issued to the lords-lieutenant of the several counties for a general muster, grounded on apprehensions of foreign invasion.*

King of
Denmark
defeated.

While the court proceeded in this unconstitutional manner, news arrived that the King of Denmark, who, by the importunity of the English monarch, had at last been prevailed on to take the field for the recovery of the palatinate, had sustained a signal defeat by Count Tilly, the Emperor's general;† and money became more than ever necessary to Charles, that he might support his ally. A general loan, therefore, towards which were to be imputed all sums granted under the name of benevolence, was immediately required. To the imposition of a loan was added that of billeting the soldiers who had returned from Cadiz; the billet money was levied from the country, with a promise of repayment out of the loan. The companies of soldiers were scattered up and down the country, and though some were executed by martial law, they broke out into the foulest disorders: 'They

* Rushworth, vol. i. p. 411 *et seq.*; Whitelocke, p. 8.

† Rush. *Id.* p. 417.

mastered the people,' says Rushworth, 'disturbed the peace of families, and the civil government of the land. There were frequent robberies, burglaries, rapes, rapines, murders, and barbarous cruelties: *Unto some places they were sent as a punishment*, and wherever they came there was a general outcry. The highways were dangerous, and the markets unfrequented; they were a terror to all, an undoing to many.'*

The means used to advance the loan, besides that of punishing the refractory by quartering troops upon them, were of the most extraordinary and despotical description. The commissioners were privately instructed to 'treat apart with every one of those who are to lend, and not in the presence, or hearing of any other, unless they see cause to the contrary; and, if any shall refuse to lend, and shall make delay, or excuses, and persist in their obstinacy, that they examine such persons upon oath, whether they have been dealt withal to deny, or refuse, to lend, or make an excuse for not lending? Who hath dealt so with them, or what speeches or persuasions he or they have used to him tending to that purpose? And that they shall also charge every such person, in his majesty's name, upon his allegiance, not to declare to any other, what his answer was.' The commissioners were also commanded to report the names of the refractory to the council-table. This accordingly having been done, men of rank were imprisoned; Sir Peter Hayman was despatched upon an expensive message to the Palatinate; and people of inferior condition were pressed into the army or navy.† But the most absurd device resorted to on the occasion, a device which, as it disclosed the root of the royal creed, brought upon it additional obloquy and contempt, was that of using the pulpit to defraud men out of their rights,

The employment of the pulpit to advance the forced loan.

* Rushworth, vol. i. pp. 418-420 (see also a letter from Denzil Hollis to Wentworth, in Strafford's *Let. and Dis.* vol. i. p. 40).

† Rush. vol. i. p. 419 *et seq.*; Whitelocke, p. 7 *et seq.*; Straff. *Let. and Disp.* vol. i. p. 36 *et seq.*

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by poisoning their minds with false notions of religious duty. For this purpose Laud was employed to draw out instructions, partly political, partly theological, to be distributed to the various pastors throughout England: 'The dexterous performance of which service,' says his biographer, 'as it raised Laud higher in his majesty's good opinion of him, so it was recompensed with a place of greater nearness to him than before he had.* The instructions were not lost upon the clergy, too many of whom were *'willing to exchange a good conscience for a bishopric;'* but the most forward to testify their loyalty were, Sibthorp, vicar of Brackley, in Northamptonshire, and Dr. Roger Manwaring, one of his majesty's chaplains in ordinary, and vicar of the parish church of St. Giles in the Fields. The first composed, preached, and subsequently published in print, a sermon on the occasion, in which he says, 'that it is the duty of the prince, who is the head, and makes his court and council, to direct and make laws,' Eccles. viii. 3, 4. 'He doth whatsoever pleaseth him. Where the word of a king is there is power, and who may say unto him what doest thou?'—In another place he says, 'If princes command anything which subjects may not perform, because it is against the laws of God or of nature, or impossible; yet subjects are bound to undergo the punishment without either resistance or railing, or reviling, and so to yield a passive obedience where they cannot exhibit an active one. I know no other case, but one of those three, wherein a subject may excuse himself with passive obedience; but, in all others, he is bound to active obedience.'† Manwaring preached two sermons to the same purpose before the king and court. He maintained that the king is not bound to observe the laws of the realm: that his royal will and command in imposing loans and taxes, without the common consent in parliament, obliged the subjects'

* Heylin's *Life of Laud*, p. 161 *et seq.*; *Laud's Diary*.

† Rush. vol. i. p. 422; Whitelocke, 8.

nsciences upon the pain of eternal damnation. That ose who refused to comply with the royal demand, ended against the law of God, and the king's supreme thority, and became guilty of impiety, disloyalty, and bellion : That the authority of parliament is not neces- ry for the raising of aids and subsidies ; it is not dained to confer any right upon kings to receive tribute ; at is due to them by natural and original law and stice ; but meetings of it are only held for the more ually imposing and exacting subsidies.* Sibthorp's rmon could not properly be published without a licence. ie duty of authorising publications was vested in the imate, but he generally deputed such matters to his aplains. In this instance, however, Charles, who con- ived that the name of a popular archbishop would both lk that prelate's influence and promote the royal object, isted that the primate should license the sermon with e authority of his own name. But Abbot no sooner pected the production, then he protested against the ctrine, and refused his sanction. The king sent to him eated messages to obey his commands, and intimated at, if the prelate continued obstinate, he would take other course with him. Abbot persisted in refusal, d therefore was suspended from the exercise of his ice, which was put into commission, banished from ndon, and confined to his country house.† But his ajesty's disappointment in this quarter was amply recom-

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* Rush. vol. i. pp. 422, 423; Hey-
lin's *Life of Laud*, p. 167; White-
ke, p. 8; Hacket's *Life of Wil-*
son, part ii. p. 74. Manwaring's
piety was as gross as his politics
re servile. He says, 'That of all
ations the first and original is be-
een the Creator and the creatures;
next between husband and wife;
third between parents and chil-
n; the fourth between lord and
vants: from all which forenamed
pects there did arise *that most high,*
red, and transcendent relation be-

tween king and subject.' 'A strange
expression,' observes Hacket, 'which
calls the last a transcendent relation
arising out of all the former, when
the first is between the Creator and
the creature. God is a great God, a
King above all gods.' *Id.* Hacket
observes, that 'the venom of the
new doctrine would have reduced
the people to the state of Turkey'
(pp. 76-78).

† Rush. vol. i. p. 431 *et seq.*;
Abbot's *Narrative*, *Id.*; Heylin's
Life of Laud, p. 170.

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pensed in another : Laud crowned his efforts on that head, by licensing this and other productions.*

The extreme love of power, like other violent passions, generally defeats its own object. Charles encouraged high-church doctrine, because it inculcated passive obedience, and yet, by thus protruding it on every occasion as a dirty tool of state, he brought upon it new odium as a naked instrument of tyranny, which all who regarded the national rights were bound to resist. Men had, in a religious view, been disgusted at an insidious proceeding immediately after the dissolution of the late parliament, and this increased their discontent, by fully unveiling the principles which governed the religious councils of the prince. A proclamation, under the pretext of preserving the peace of church and state, had then been issued, by which the people were prohibited, by threats of exemplary punishment, from raising, publishing, or maintaining, either by writing, preaching, conferences, or otherwise, any other opinions concerning religion than such as were clearly warranted by the doctrine and discipline of the Church of England, as established by authority. 'The effects of this proclamation,' says Rushworth, 'how equally soever intended, became the stopping of the Puritans' mouths, and an uncontrolled liberty to the tongues and pens of the Arminian party.' The Puritans, too, a wide and comprehensive class, grudged to find that, while they were so hardly dealt with, contrary to law, all the penal statutes against Catholics, which Charles had pledged himself to enforce, were eluded, by a commission to compound with recusants at easy rates, whereby the royal coffers were supplied and the obnoxious body favoured.†

Imprison-
ments, &c.
for refus-
ing the
loan.

The court divinity no more satisfied the judgment of the people than cruelty broke their spirit. Though some, by submission, obtained relief from imprisonment, there were others who determined to appeal to the laws of their

* Rush. vol. i. p. 444 (see also p. 440); MSS. in Lambeth Lib. No. 943, p. 567.

† Rush. vol. i. p. 412 *et seq.*

country. Sir John Eliot petitioned the king against so gross an infringement of public rights;* and five gentlemen of distinction, imprisoned for refusing the loan, determined, by taking out writs of habeas corpus in the King's Bench, to ascertain whether the sworn guardians of the law would deny its protection. The result proved the melancholy truth, that a corrupt government pollutes every branch of administration. Sir Randolph Carew was punished for his integrity by removal from the office of chief justice, and it was bestowed upon Sir Nic. Hyde, as a return for his dexterity in drawing the duke's answer to the impeachment, and as a place where he might have a field for the exertion of his talents in support of the prerogative. This individual delivered the opinion of the court, which at once swept from the people every hope of a legal remedy, and in that respect left them as defenceless objects of tyranny as the inhabitants of Turkey:— 'That the return was positive and absolute by the king's special command, and the signification of it by the lords of the council is only to inform the court; and that the *habeas corpus* is not to return the cause of the imprisonment, but of the detention in prison; that the matter of the return is sufficient, the court is not to examine the truth of the return, but must take it as it is.' But the misguided monarch had at this time sagacity to perceive that, without the support of a military force, such a system could not be maintained, and therefore, as we shall afterwards see, he hastened to introduce foreign troops into the kingdom.†

Luckily, however, for England, the favourite's private interests and passions defeated the intentions of the court, by involving it in new difficulties. Charles ought, in policy and consistency, to have dropped all schemes of foreign conquest, as these necessarily interfered with his projected conquest over the privileges of his subjects.

War with
France,
and the
causes.

* Rush. vol. i. p. 420 *et seq.*

Whitelocke, p. 8; Howell's *State*

† Rush. vol. i. p. 458 *et seq.*; *Trials*, p. 1 *et seq.*

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But Buckingham, who fed his master's passion for power, by boasting that he would make him the greatest monarch in Europe,* not only continued the war with Spain, but led him into unprovoked hostilities with France. The motives assigned by historians for this war are, perhaps, the most singular that occur in the annals of mankind. Buckingham having been sent to France to conduct Henrietta to England, appeared there in all the lustre with which the wealth of his country could adorn him, and even outshone the whole French court in their own peculiar vanities. His beauty, dress, and manner attracted the eyes of all, and such was the unmeasured presumption of the man, that he dared 'to fix his eyes upon, and dedicate his most violent affection' to, the young queen of France, Anne of Austria (who would appear not to have had the strictest notions of conjugal fidelity), 'and to pursue it with the most importunate addresses.' But he had, in a quarter where it was least to have been expected—Cardinal Richelieu himself, whose calling, age, and station of prime minister ought to have saved him from the merit of such a reproach—a rival, who watched his motions with unceasing jealousy; and when Buckingham, after having left the French court with Henrietta, and proceeded so far on his journey, secretly returned to visit his illustrious mistress, he received a hint that, if he did not desist from his purpose, he should be immediately assassinated. The intelligence so transported him with passion, that he swore, 'on the instant, that he would see and speak with the lady in spite of the strength and power of France.'

On this occasion he was successful: men who are so abandoned as to undertake assassination will of course accept of greater hire to betray their employer; and in this instance the instruments of Richelieu must have known that the death of the English favourite would be keenly

* Hacket's *Life of Williams*, part ii. p. 65.

prosecuted by the court that sent him, and that they could probably be sacrificed by that crafty cardinal, to reserve his own character and safety as well as those of the nation. The duke therefore procured access to the queen, who affected surprise and indignation at his passionate addresses, but whose gentle reproaches at dismissing him only indicated the impure flame that burned within her. The interview, however, was short and unsatisfactory, and he endeavoured to obtain a pretext for another visit to the French court. But all his overtures were rejected, and he is supposed to have therefore immediately determined upon plunging the two countries into all the horrors of war, that, after multiplied victories, the French court should sue for peace, when they would no longer reject him as a negotiator. 'Henceforth,' says Macaulay, 'he took all ways he could to undervalue and asperate that court and nation;' and lest the young queen's interest with her husband should thwart his designs, 'he took great pains to lessen the king's affections towards her,' while he treated herself with downright brutality. One day that he supposed her majesty had shown some disrespect to his mother, by not calling upon her at a certain hour, according to her promise, for not fulfilling which she had a good excuse, he entered her chamber in high choler, and after some rude expostulations, 'told her she should repent it.' The queen answered with some quickness, when he audaciously replied, that there had been queens of England who had lost their heads.' Much has been already said of the influence of the duke over Charles; and that minion's success in engaging him in the French war is another proof of his unlimited ascendancy. But domestic history affords many instances of ill-disposed confidential associates having destroyed the conjugal felicity of newly-married couples, that we cannot much wonder at the effects of Buckingham's interference here, especially as Henrietta's violent temper, and the conduct of her servants and

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attendants, gave such an advantage over her. Matters proceeded to that extremity, that she wished to return to her native country, and the duke had the assurance to propose himself as her conductor. But his proposal was indignantly rejected by the French court—a circumstance which is alleged to have farther confirmed his intention of a war.*

The facts narrated above rest upon too good authority to be disputed. But, though such be the cause alleged for the war by Clarendon, who yet condemns the parliament for its reluctance to consign the public treasure to such hands, it is incredible Buckingham should have been actuated by motives so insane; and, if he had, he necessarily confined them to his own bosom, and must

* The authorities for this narrative are chiefly Clarendon and Mad. de Motteville, whose opportunities of knowledge (the latter was a confidential attendant of the French queen) were of the best sort. Their accounts do not quite cohere; but I have weaved them together, as I think they can be easily reconciled. Clarendon says that Buckingham was deterred from his intended visit to the queen when he returned to court, after having left it with Henrietta. De Motteville describes the interview, in which she could not be mistaken, yet says nothing of the threatened assassination. But as the assassins must have reported a false tale to Richelieu, I conceive that Clarendon took his account from the cardinal's confidants, who were imposed upon, while De Motteville took hers from the queen's mouth (see Clarendon's *Hist.* vol. i.; Mem. par Mad. de Motteville, tome i.). See papers in the Appendix to Ludlow's *Memoirs* about the domestic quarrels between Charles and his queen (Hardwick's *State Papers*, vol. ii. p. 2 *et seq.*; Ellis's *Col.* vol. iii. p. 201 *et seq.*; *Nani Liv.* vi. anno 1625; *Aysc. MSS.* Brit. Mus. No. 4161, vol. ii.; *Let.* by Mr. J. Mead, July

2, 1625, and June 28, 1626; Ellis, vol. iii. pp. 212, 237 *et seq.*; Scott's *Somers' Tracts*, vol. iv. p. 88; Howell's *Fam. Let.* pp. 177, 178). From the following letter of Charles to his favourite, the mild, composed temper ascribed to him may be doubted:—'Steinie, I have received your letter by Dic Greame: this is my answer. I command you to send all the French away to-morrow out of the toun; if you can by fair means, but stike not long in disputing, otherwise force them away, dryving them away like so many wyld boastes, untill ye have shipped them, and so the devill goe with them. Let me heare no more answer, bot of the performance of my command; so I rest your faithful and constant loving friend, Charles R. Oaking, 7th Aug. 1626' (*Aysc. MSS.* Brit. Mus. No. 4161, vol. ii.; Ellis, vol. iii. p. 244.—I have seen all the originals). Abbot describes Buckingham as being in a perpetual fever of jealousy. Knowing that he stood by the royal favour alone, he trembled at the idea of any one of the least influence gaining access to the king's ear (see *Nar.* in Rush. vol. i. p. 445).

have pretended others to his master. We are, therefore, left to conjecture his motives, and more substantial ones can easily be found. Indeed, if the time of the loan of ships to France be considered, it will shake our credit in the motives imputed by historians; for it was posterior to the time he is alleged to have made so silly a threat. The occasion of his journey to Spain, and the breach of the treaties, has already been developed; and we apprehend, though other motives were superadded, that a similar jealousy mainly actuated him now. Henrietta was strongly inclined to bustle and intrigue in affairs of state; and this could not fail to receive encouragement both from her native court and her followers. From the first, that they might obtain influence through her over the British Cabinet: From the last, that she might be in a situation to reward their services. Many younger sons of good families had accompanied her, from the hope of making their fortunes in England, and at first they drained the royal coffers.* Largesses to them, however, augmented the necessities of the throne, and consequently the dangers which beset the favourite, while they bereft him of the means of gratifying his cupidity, or rewarding dependants, whose attachment was necessary to his safety. This produced a clashing of interests, and awakened the minion's jealousy, while his situation could not admit of a rival. Unlike Laud and Strafford afterwards, he could not act a subordinate part, or submit to a participation of power. All the public offices were filled by his creatures, who laboured assiduously to promote his greatness, that they might advance their own. But if Henrietta gained the confidence of her husband, this immense patronage must cease, and he had already felt that those on whom he had showered down the choicest

* Hacket says that afterwards 'the French hangers-on in the court devoured so much, that all Juxon's thrift, which amassed much, was gulped down by these insatiable

sharks' (*Life of Williams*, part ii. p. 96; Rush. vol. i. p. 424; Whitelocke, p. 48; Howell's *Fam. Letters*, p. 183).

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favours, would not scruple to forsake a falling man. Such an event, however, must be productive not merely of loss of power, but of absolute ruin to one whom all the influence of the crown had scarcely, hitherto, been able to rescue from destruction. It is not wonderful, therefore, that an individual so unprincipled, should have laboured to alienate the king's affections from his consort, to cut off her intercourse with the French court, and to remove her attendants, whose insolence and intrigues justified Charles for, in this respect, violating the marriage articles. Her priests had even brought a reproach upon the kingdom, by enjoining as a penance, that she should walk barefoot to Tyburn, out of respect to the memory of Jesuits who had suffered there by the hands of the executioner, and whom they affected to regard as martyrs, though, as there had scarcely, if ever, been an instance of any one suffering for religion alone, they must have ill-deserved that character. The rivalry in love between Richelieu and the duke might, in one respect, contribute to embroil matters, as it might lead the first to interfere more eagerly, through the queen, in English affairs, and make the latter more apt to suspect his intrigues. But, on the other hand, Buckingham had in a matter, which had brought upon him the general resentment of his countrymen, been overreached by the crafty cardinal, who then entirely ruled the French affairs, and he probably expected by hostilities to redeem his character, and exact revenge. The insidious policy of the French court had mainly occasioned the ruin of Mansfield's army, by denying a passage through their territory, which, if it were not distinctly promised, was yet indirectly held out. This was overlooked at the time, in the eagerness for the match; but the after conduct of that court revived the circumstance with resentment.* When the ships were lent against Rochelle, the

* Rush. vol. i. p. 154. This was assigned as one of the causes of the war (*Id.* p. 424).

French court had, to induce the loan, engaged to co-operate in the war against the house of Austria. But this never had been seriously intended, and all the visions of covering the baseness of the act by the brilliancy of military achievements, were disappointed, while, at the very moment the popular fury in England raged highest against the favourite, it was with difficulty that the ships could be recovered. In this extremity Charles interposed to mediate a peace between the French king and his Protestant subjects; but, though he succeeded, the terms granted neither satisfied the English, nor secured the Huguenots, for whose absolute subjection Richelieu was secretly preparing the means. The duke, therefore, probably flattered himself with the hope of recovering his popularity, by declaring war against France, in favour of the Huguenots, while he at the same time removed the immediate cause of danger to himself, from French intrigues through the queen, and gratified his revenge against the cardinal. It is said that a French abbot, related to the Duke of Orleans, and who acted out of resentment to the cardinal, had much influence in instigating Buckingham to the war.*

To provoke a declaration of hostilities on the part of France, Buckingham encouraged the capture of her vessels, while he dismissed the queen's attendants with ignominy, and sheltered refugees. But the first only provoked reprisals; the others were disregarded. In the meantime Soubieze, who, with his brother the Duke of Rohan, was at the head of the Protestant party in France, having been apprised by the abbot alluded to, of the change in the sentiments of the British cabinet, arrived in England for the purpose of encouraging a war with

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Soubieze
arrives in
England
to encour-
age a war.

* Rush. vol. i. p. 424. Some papers in the State Paper Office throw considerable light upon the state of Rochelle, and the policy of governments at this juncture (France) — from January 1624 to December

1626. The Huguenots were a very powerful body keeping up relations of peace, &c. The principle that revolution in one country encourages it in another was then well understood.

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France. He represented that, if Richelieu succeeded in his design against the Huguenots, there would no longer be a counterpoise to the Catholic interest in Europe; and that then, in the coalition of the house of Austria with France, the safety of England would clearly be endangered.* The reasoning was plausible, but better calculated for the people, who had taken the same view from the beginning, than for their king, whose policy had been opposite:† Yet it succeeded with the court at this period. Rohan engaged to raise four thousand foot, and two hundred horse, to co-operate with the English army the instant it landed, and Buckingham was impatient for hostilities. Finding, therefore, that the vexatious arts to provoke the French had failed, he determined to waste time no longer; and that there might be no room on this occasion for condemning him as lingering at home, while, as high admiral, he entrusted the fleet to others, he resolved to undertake the command of both army and navy himself.

Buckingham undertakes an expedition to the French coast, June 27, 1627.

The duke, having prepared a hundred sail, of which, however, ten only were of the royal navy, with six or seven thousand land forces, sailed from Portsmouth on the 27th of June, under the pretext of relieving the Palatinate, and, towards the latter end of July, appeared before Rochelle: and it is singular that the manifesto which he published of the causes of the war was in his own, not in his master's name.‡ But matters had been

* Rush. vol. i. p. 424.

† The following letter will afford some idea of the meddling character of Charles in the details of public business, instead of entrusting them to his ministers, and of his capacity for composition; it will reflect light upon the policy. It is in answer to Lord Conway's application in favour of Soubieze: 'The tymes, you know, are scarce of monie; yet if the treasurer can fynd means to relieve Soubieze's men he shall be verrie well come; I will willingly allowe of it. If this can be done, it will be the

best answer I can make to Soubieze's letter that he sent me. If not, he must be answered with the necessity of the tymes. As for letters of mark, I have no mynde to sette out pyrates, for so I know they will be, what caution soever they give. The rest of the French business I will order when I come. Charles R.' (State Paper Office, *Id.*)

‡ See a letter of Charles regarding the manifesto given in note at the end of this volume. It evinces his usual tricks, and that he considered the manifesto his own.

so ill-concerted, that the inhabitants shut their gates against him, alleging, that however grateful to the English court for its offer of succour, they were obliged to decline its interposition, as they were bound by oath of union not to act without the general consent of the Protestant body in France. The French court had already an army on the march to Rochelle; there was a hostile party in the town, and the well-affected, who, in all probability, had no confidence either in the steadiness or valour of Buckingham, dreaded lest a recourse to arms should only provoke fresh vengeance from a powerful government. But Soubieze, who engaged to raise a small army, successfully laboured to overcome their aversion again to try the fortune of war in an attempt to establish their independence, and received private assurances that they would preserve the city for the English, and assist them with supplies, if they remained in the neighbourhood. After these assurances, Buckingham consulted with Soubieze, whose knowledge of the coast rendered his advice of great consequence, regarding the post to be occupied till the citizens were prepared for action. His choice lay between the Isle of Oleron and that of Rhé; and himself proposed the first, as being both near Rochelle, weakly garrisoned, and plentifully stored with wine, oil, and other commodities, while the other was more distant, had a citadel well-fortified, and was provided with a considerable force both of cavalry and infantry. Soubieze approved of his choice, yet, before giving a definitive opinion as to the plan of operations, went to consult with the citizens, that they might act in concert.

Buckingham did not wait for his return, but, with that fickleness of temper and unaccountableness of purpose which marked his general conduct, directed his course to the Isle of Rhé. His landing there was keenly opposed; but after a desperate conflict, in which the English displayed gallantry that even the enemy paid a tribute of praise to, the French were obliged to retire; and had the

Attacks
the Isle of
Rhé

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duke followed up his first success, the island must have surrendered. Such an event would have been productive of a great change in French affairs, for the king had fallen sick, and the court was rent into factions, while the bare apprehension of losing the island was such, that honourable terms were offered to the Huguenots, on condition of their not joining the English. But Buckingham, as if he disdained to take an advantage, instead of prosecuting his success, allowed the enemy five whole days to recruit themselves with fresh forces from the Continent, and prepare the principal fort, St. Martin's, for a siege. In marching up to St. Martin's at last, he neglected, as unworthy of notice, a small fort, La Prée or Meadow-castle, which, while it could have been demolished without difficulty, proved afterwards of mighty consequence in obstructing his retreat. Instead of vigorous measures against St. Martin's, even after he had reached it, he allowed himself to be amused with offers of capitulation, till the garrison was supplied with additional forces, and the sick and the wounded removed, by means of a small craft, which stole over from the main-land during the night, in spite of all his hundred sail. When he fondly imagined that he had nearly starved them into a surrender, they insultingly displayed all kinds of provisions from the walls. In the meantime Rochelle is blocked up by the French king, and too late declares for the English. It was essential to their safety, therefore, that the island should now be taken; and as Buckingham had already received a reinforcement of 1500 men, and daily expected the Earl of Holland, with additional forces, Soubieze urged with reason, that the attempt against St. Martin's should not be abandoned—that it was, in spite of the politic appearances to the contrary, in reality so ill-supplied, that, with the expected reinforcement it must inevitably yield; and that abandoning the attempt now must be fatal to Rochelle. Buckingham, however,

neither followed this salutary counsel, nor awaited the arrival of the Earl of Holland, but 'begins to batter the citadel, then proposeth to go away, then alters his resolution, and storms the fort, but in vain, whereupon he raises the siege, and retreats towards the ships.'*

By this time the small fort that he had neglected was properly garrisoned by forces from the main-land, and a new route was necessary in the retreat. It lay partly along a narrow mound or causeway, which afforded the only passage, amongst deep salt-pits or rather marshes, and was terminated by a bridge that joined the small island of Oie to that of Rhé. Buckingham neglected to raise a fort at the entrance, and another at the bridge, though they were both in his power. The enemy hung upon the English rear, yet, though the duke repeatedly offered them battle on equal ground, they declined the engagement till the English were on broken ground, and the greater part had entered the narrow causeway. Every kind of disposition to resist the enemy in this situation had been overlooked, and the cavalry, which covered the retreat, and could not operate on such ground, being violently attacked, were driven precipitately amongst the foot, whom they trampled down, or so crowded together, that they pushed each other into the ditches and salt-pits. All this time the van was ignorant of what had occurred in the rear, but as no sufficient provision had been made to secure the passage over the bridge, the enemy obstructed it from the opposite side, while the rear was still galled. The obstruction in the van was soon overcome, and the portion of the army that passed the bridge was saved; But during its continuance the rear was so dreadfully assailed, (and from the total absence of all military skill, as well as the want of a fort at the entrance of the causeway, it was quite defenceless,) that the soldiers tried to save themselves by crowding still more together,

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Buckingham resolves to abandon his design, November 8, 1627.

* Whitlocke, p. 8.

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while the horse continued to trample down the foot; many were slain by the enemy, but far more trodden to death, or thrown into, and drowned in, the ditches and salt-pits.* 'Noble and ignoble,' says Clarendon, 'were crowded to death, or drowned without the help of an enemy; and, as many thousands of the common men were wanting, so few of those principal officers who had attained to a name in war, and by whose courage and experience any war was to be conducted, could be found. The effects of this overthrow,' continues the noble historian, 'did not at first appear in whispers, murmurs, and invectives, as the retirement from Cadiz had done, but produced such a general consternation over the face of the whole nation as if all the armies of France and Spain were united together, and had covered the land.†

The public calamities were aggravated by the state of the English shipping: a vast number of vessels had either been lost or captured during the last three years, and the

* Arcis Sam-Martinianæ Obsidio et Fuga Angl. a Rea Insula Script. Jac. Isnard. *Expositio in Ream Insulam* Auth. ed. Dom. Herbert; Rush. vol. i. p. 425 *et seq.*, p. 462 *et seq.*; Heylin's *Life of Laud*, p. 169; Balfour's MS. *Annals*, Adv. Lib.; Hardwicke's *State Papers*, vol. ii. pp. 13-53. 'I have set three maine projects a-foot, besydes many small;' writes Charles to Buckingham, Aug. 13, 1627; 'mint, increasing of the customs by imposing on the book of rates, and raising of a banke. The two first I shall certainly go speedilie through withall; the last is most difficult, but I haue good hopes of it' (p. 14, and original in Brit. Mus. Har. MSS. 6088). I presume that by the mint he meant a debasement of coin, a project which had been entertained the preceding year, but from which the king had been dissuaded by Cotton (*Aysc. MSS. Brit. Mus. No. 4161*, vol. ii.; *Letter*, September 18, 1626—this also original). Parliament has been condemned for refusing to pass a bill for tonnage

and poundage for the king's life; but from this fresh-projected scheme of raising the customs it was absolutely necessary. After all the duke's ill success, Charles writes to him that with whatever success he came he should be ever welcome, 'one of his greatest griefs being that he was not with him in that time of grief, as they might have much eased each other's griefs;' and that he, the duke, had 'gained in his mind as much reputation as if he had performed all his desires' (p. 20; *Strafford's Letters and Dispatches*, vol. i. p. 41, *Letter from Denzil Hollis to Wentworth: Nani Liv. vi. an. 1627*). Charles did not wish the manifesto to be confined to the alleged injury to the Protestant interest, as he might alter his counsels (*Hardw. vol. ii. p. 14*).

See as to the feelings of the sailors before the expedition, in consequence of not receiving their pay, and relative to the expedition and the indignation of the people, *Ellis's Col. vol. iii. p. 250 et seq.*

† Clarendon, vol. i. p. 71 *et seq.*

merchants declined to build more, because their ships were impressed into the king's service at low rates, which were not even paid; and the enemy came into the British harbours, and surveyed the rivers, whilst the very fishermen durst scarce look out.* Then mutinies in the fleet and army, under the pretext of want of pay, but in reality from detestation of the service and the duke's authority, followed this ill success: and the attempt to recruit the army by impressment was opposed as illegal. In former times, as we have elsewhere shown, soldiers were impressed from amongst the lowest classes, who were not themselves in a condition to resist authority, and whose cause the higher ranks, being personally exempted from the evil, did not support. But, now that men of consequence in the community were subjected to this grievance, for resisting the arbitrary impositions of the prince, they taught the lower classes to stand upon their privileges, and appeal to the laws. They now, therefore, opposed the impress as illegal, 'which,' says Clarendon, 'produced a resort to martial law, by which many were executed, which raised an asperity in the minds of more than of the common people. And this distemper,' continues he, 'was so universal, the least spark meeting with combustible matter to make a flame, that all wise men looked upon it as the prediction of the destruction and dissolution that would follow.†

The general discontent was farther inflamed by the maintenance of a large military establishment in the heart of the kingdom, during the winter months, when there remained no longer the pretext of any foreign expedition for continuing it: and the proceeding itself was aggravated beyond measure by the manner, the soldiers being quartered on the inhabitants, even by way of punishment, as

* Rush. vol. i. p. 466.

† Clarendon, vol. i. p. 71 *et seq.* Even in March before, it was debated at the council table whether the Essex-men who refused the press-money should not be punished by

martial law, and hanged on the next tree to their own dwellings. But the lord keeper dissuaded from it as illegal (*Aysc. MSS.* Brit. Mus. No. 4161, vol. ii.; *Letters* of Mr. J. Mead, Let. 24th March, 1626-7).

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we have already related, and breaking out in every kind of disorder. Hence the great antiquary, Sir Robert Cotton (who, though he had been threatened the preceding year with being deprived of his books, because he was accused of imparting ancient precedents to the Lower House,* was consulted by the king upon the state of affairs about the end of January), after having enumerated the causes of discontent, observes, that 'These dangerous disasters to the people are not a little improved by the unexampled course, as they conceive, of retaining an inland army in winter season, when former times of general fear, as in 1588, produced none such; and makes them, in their distracted fear, to conjecture idly, it was raised wholly to subject their fortunes to the will of power rather than of law, and to make good some further breach upon their liberties at home, rather than defend us from any force abroad.'†

The inhabitants of Rochelle, now exposed to the brunt of a war into which they had been inveigled by the machinations of the English court, earnestly prayed for relief: the pecuniary difficulties of the government daily augmented, for the expenditure had been immense, and illegal

* *Letter* of Mr. Mead, May 26, 1626.

† *Rush.* vol. i. p. 471 (see whole speech, from pp. 467 to 472). Mr. Hume has, in order to throw additional blame upon the parliament for their reluctance to grant supplies, alleged that they were not aware of Buckingham's mis-statement about the Spanish treaties; but the sentiments repeatedly expressed by the Commons disprove that idea, and, did doubt remain, it would be removed by this speech of Sir R. Cotton. For his notion, which is unsupported by authority, Mr. Hume alleges two grounds: the one, that the articles of impeachment by Bristol were not adopted by the Commons; the other, that Sir Simon D'Ewes, long afterwards, in a speech against Spain, alluded to the treachery of that court on the former

occasion. But, with regard to the first, it was proper to keep the two charges against the duke distinct, as the Lords might have taken advantage of a failure in any article to dismiss the whole, and the Commons could not have adopted that by Bristol unless he had dropped the prosecution at his own instance, since no man is bound to answer the same charge before the same tribunal from two quarters at once. As for the speech by D'Ewes, long afterwards, it must either be attributed to his peculiar ignorance, or, as is far more likely to be the truth, to policy. He, with many others, abhorred the connection with Spain, and, in arguing the case, he assailed the court party with their own weapons, by taking the previous statements from the crown as correct.

ways of raising money unproductive, in comparison to the discontent they occasioned; and as the cry of disaffection hourly increased, the advice of Sir R. Cotton to call a parliament, and to let the duke appear forward in recommending it, was adopted, and writs were issued for the 7th of March following. To soften the general resentment, the imprisoned gentry of distinction, to the number seventy-six, amongst whom was the illustrious Hampton, were liberated from confinement; while orders were transmitted to the lord mayor and aldermen of London, to use moderation in exacting the loan from such of the citizens as declined payment: with the same view also writs were sent to the Archbishop of Canterbury, the Earl of Bristol, and Williams, bishop of Lincoln. But the different shires and boroughs, considering them who had suffered persecution for resisting usurped authority, the most likely to stand forward the fearless advocates of public privileges, everywhere elected them that had been imprisoned for refusing the loan.

Having thus returned to a constitutional course, it might have been expected that Charles would have at least postponed any new arbitrary device till he had fairly tried the temper of the legislature; yet, without even considering that concealment in great affairs is, generally speaking, impracticable, he granted a commission to certain privy counsellors to consider of raising money by impositions or otherwise, 'wherein form and circumstance must be dispensed with, rather than the substance be lost.'* Many

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A parliament resolved upon, January 29, 1628.

* See Commission in Rush. vol. i. p. 624. Rush. *Id.* p. 478. N.B. See copy in Advocate's Library as printed, viz. 614—471. One R. Woodward, in the Signet Office, thus writes to Windbanke, in the month of February, 1627-28: 'The writs are coming for the parliament, if letters which are now to goe into all the shires, do not kill it in the conception: they must be directed to the several justices for the carrying (by way of anticipation) a great

sume of money for setting forth a flete of ships by the 1st of March, the king not doubting but the parliament will after give way to such a supply in urgent necessity. These letters have been once stayed and altered, and I hardly wishe the purpose of them may be also altered, for in all men's opinions they will be in parliament if they go forth.' In another letter, dated 20th February, the same Woodward writes to Windbanke: 'I can now let you know

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projects were, in consequence, debated at the council-table, amongst others ship-money, but, at last, the determination of the matter was deferred till the result of the ensuing parliament was ascertained. But as Charles clearly perceived that, in order to assimilate the government to that of France, he required, like it, the assistance of a mercenary army, he secretly gave orders, and remitted money to the Continent for providing arms, and raising German troops to be transported into England, in addition to the force so unusually kept up in the bowels of the kingdom. Mr. Hume, from the limited number of the foreign troops to be raised, which he states to have been a thousand horse, without hinting that arms were likewise ordered for ten thousand foot, seems, by pronouncing the force insufficient for the purpose, to insinuate a doubt as to the king's intention, though he does not pretend to explain upon what principle foreign troops were to be clandestinely introduced into the kingdom. But, in the first place, the learned author appears to have overlooked the fact that there was then a considerable army retained in England contrary to all law and precedent: in the second place, he had not attended to the very authority to which he refers, otherwise he must have at once observed that it was not the royal intention to be satisfied with a thousand horse. The privy seal commands the treasurer of the Exchequer 'to pay, or cause to be paid, unto Philip Burlemach, of London, merchant, the sum of 30,000*l.* to be paid over by bill of exchange into the Low Countries and Germany, unto our truly and well-beloved Sir William Balfour, *knt.*, and John Dolbier, *esq.*, or either of them, for levying and providing certain numbers of horses, *with arms for horse and foot*, to be brought over into this king-

that the parliament holds according to the first report, and that fearful preludium of privie seales and letters not to be represented upon the stage, so that now there is more hope of better harmony in the lower house.' In the same letter he says, 'The fleet

before Rochelle is certainly retired, and the cause reported to be a great sickness false among them, which will hereafter give them a much greater assurance seeing their help comes from above.'

for our service, viz. for the levying and transporting one thousand horse, 15,000*l.* for five thousand muskets, *thousand corslets, and five thousand pikes*, 10,500*l.*; one thousand cuirassiers complete, two hundred cors- and carbines, 4,500*l.** Burlemach the agent, a chman, who had been naturalised by statute in the xeding reign, was examined upon this business before Commons, and he 'confessed that he had received 100*l.* by privy seal for buying of horses, *that one thou- d of them are levied*; that those horses with their riders to come over, and arms are provided for them in Hol- l.'† This implies that the thousand horse yet raised e only a *part of that species of military intended*; and Burlemach still retained the confidence of the court, testimony in regard to it cannot be suspected. In the place, it should never be forgotten that Charles had ady proceeded to the most unconstitutional lengths, hout the help of this instrument of arbitrary power; t Mr. Hume himself, in narrating the events recorded ve, admits that had this monarch 'possessed any mili- y force on which he could rely, it is not improbable t he would have at once taken off the mask, and erved without any regard to parliamentary privileges;' l that, so misguided was this unhappy prince, that he esequently took off the mask in good earnest, and went the most odious extremities, unsupported by military e. But, indeed, it must be perfectly obvious that as arles had issued a commission for excise, in order to ersede the legislature, on the only ground upon which showed himself at all disposed to submit to parliament- proceedings, he had necessarily resolved upon carry-

If we may credit the infor- tion which Mr. Mead had got his head, we must conclude that e two had been duped by the writes. Balfour would appear to e only acted on an assurance that troops were not to be employed home—Buckingham saying that

he wished the plague of God might light on him if he included any such matter. Harleian *MS.* 390, p. 328. Burlemach is often mentioned in the State Papers of this reign, as I found in my researches in the State Paper Office.

† Rush, vol. i. p. 612.

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ing his measures by violent courses ; and that when force is resorted to, it is either calculated to be sufficient for the occasion, or is intended to be augmented.—Such were the feelings of this prince that, in the preceding year, when a parliament was proposed at a meeting of the council, he said that ‘ he did abominate that name.’*

* Ayc. MSS. Brit. Mus. No. 4161. vol. ii. ; *Letter* from Mr. J. Mead, 30th September, 1626. Much has been said about parliament having advised the war for the recovery of the Palatinate, and Charles himself constantly harped upon that string, yet the idea he entertained of parliamentary interference, even in his father's time, may be conceived from a letter that he wrote to Buckingham, in which he says ‘ that the subsidy granted by parliament is not so great a matter, as that the king need be indulgent over them for it. Yet,’ continues he, ‘ on the other side, for his reputation abroad at this time, I would not wholly discontent them : therefore, my opinion is, that the

king should grant them a session at this time ; but withal I would have him command them not to speak any more of Spain, whether it be of that war or of my marriage.’ *Hardw.* vol. i. p. 456. Yet to gratify his own and his minion's passions, Charles designed to use this assembly to control the throne ! There is amongst the Lansdowne MS. in the Brit. Mus. No. 493, p. 290, a paper entitled ‘ the copie of a letter to the Lower House of Parliament touching divers grievances and inconveniences of the State,’ and which proves that the most barefaced proceedings were resorted to, in order to obtain returns of members suitable to the court.

PARLIAMENT ASSEMBLED.

CHAPTER VIII.

FROM THE ASSEMBLING OF THE THIRD PARLIAMENT TO ITS DISSOLUTION; INCLUDING THE VARIOUS TRANSACTIONS OF THAT PARLIAMENT, AS THE PETITION OF RIGHTS, ETC.—THE ASSASSINATION OF BUCKINGHAM BY FELTON DURING THE PROROGATION, ETC.; THE FATE OF ROCHELLE; THE RE-MEETING OF PARLIAMENT, AND DISSOLUTION, WITH THE IMPRISONMENT OF MEMBERS OF THE LOWER HOUSE, AND THE DEATH OF SIR JOHN ELIOT IN PRISON.

IN this perturbed state of the public mind, parliament assembled. Nor was the nation discontented without cause. At home the will of the prince had been substituted for law; money having been illegally extorted; the personal liberty of the subject invaded, and legal redress denied; soldiers, chiefly Scotch and Irish, and many of them Papists, who committed every disorder, quartered unlawfully upon the inhabitants; nay, martial law itself resorted to for the purpose of enforcing obedience to usurpations upon freedom. Abroad the vilest discomfiture had tarnished the glory of British arms; commerce was suspended; and the Protestant interest, which formed a pretext for the war, irretrievably injured. But it redounded in no small degree to the honour of parliament, that the representatives of the people, while they were imbued with, and expressed, the common feelings, as they had participated in the sufferings, proceeded to the discharge of their legislative duty with that deliberative calmness which their situation demanded.

Charles, on the other hand, showed, in his address to parliament, that though he condescended to summon it as the easiest way to accomplish his purpose, he did not con-

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ceive himself bound by the divine nature of his office to draw supplies from the people, only through that medium. After alluding to the dangers from France and Spain, which he alleged threatened the country, he says, ‘I therefore, judging a parliament to be the ancient, speediest, *and best way*, in this time of common danger, to give such supply as to secure yourselves, and save our friends from imminent ruin, have called you together. Every man now must do according to his conscience : *Wherefore*, if you, as God forbid, should not do your duties in contributing what the state at this time needs, *I must, in discharge of my conscience, use those other means which God hath put into my hands, to save that which the follies of particular men may otherwise hazard to lose. Take not this for a threatening, for I scorn to threaten any but my equals ; but an admonition from him that, both out of nature and duty, hath most care of your preservations and properties.*’ The lord keeper, after assigning reasons for the necessity of an immediate supply, through the exhausted state of the treasury, and the situation of Europe—the house of Austria daily rising into more alarming power ; and France, swayed entirely by a popish faction, which had broken faith with the Huguenots—reminds the two houses, that aids granted in parliament were most agreeable to the people ; and informs them that ‘just and good kings, finding the love of their people, and the readiness of their supplies, may the better forbear the use of their prerogatives, and moderate the rigour of the laws towards their subjects. This way, as his majesty hath told you, he hath chosen, *not as the only way, but as the fittest ; not as destitute of others, but as most agreeable to the goodness of his own most gracious disposition, and to the desire and weal of his people. If this be deferred, necessity and the sword of the enemy make way to the others. Remember his majesty’s admonition ; I say, remember it.*

The Commons were extremely unfortunate in the choice

of their speaker, Sir John Finch, an individual disposed to purchase court preferment at any price, and who, therefore, in his address to the throne, upon being approved of by his majesty, gratified the royal ears with doctrine which justified all the king's pretensions.

The Commons, after they had appointed committees, entered at once upon the state of the kingdom, in regard to benevolences, forced loans, arbitrary imprisonments, billeting soldiers, &c., and evinced a resolution not to grant supply till these grievances were repressed. The business was opened by Sir Francis Seymour, who spoke thus : 'This is the great council of the kingdom, and here, if not here alone, his majesty may see, as in a true glass, the state of the kingdom : we are called hither, by his writs, to give him faithful counsel, such as may stand with his honour ; but that we must do without flattery ; and being chosen by the Commons to deliver up their just grievances, this we must do without fear : let us not be like Cambyzes' judges, who, being asked by him concerning something unlawful, said, though there was no written law, the Persian kings might do what they listed. This was base flattery, fitter for reproof than imitation ; and as flattery, so fear, taketh away the judgment. I shall shun both these, and speak my mind with as much duty to his majesty as any man, not neglecting the public. But how can we speak of our affections while we retain our fears, or speak of giving, till we know whether we have anything to give ? For if his majesty may be persuaded to take what he will, what need we give ? That this hath been done, appeareth by the billeting of soldiers ; a thing no wise advantageous to his service, and a burthen to the commonwealth ; the imprisonment of gentlemen for the loan, who, if they had done the contrary for fear, their faults had been as great as theirs who were the projectors of it. To countenance those proceedings, hath it not been preached in the pulpit, or rather prated, "all we have is the king's *jure divino* ?" But when preachers

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forsake their own calling, and turn ignorant statesmen, *we see how willing they are to change a good conscience for a bishopric.* It is too apparent the people suffer more than ever : Will you know the reason ? We shall find those princes have been in greatest wants and necessities that have exacted most of their subjects. The reason is plain : A prince is strongest by faithful and wise counsel : I would I could truly say, such had been employed abroad. I speak this to show the defect proceeded not from this house. I must confess he is no good subject that would not willingly lay down his life when the end may be the service of his majesty and the good of the commonwealth : but he is no good subject, but a slave, that will let his goods be taken from him against his will, and his liberty against the laws of the kingdom. In doing this we shall but tread in the steps of our forefathers, who still preferred the public interests before their own rights, nay, before their own lives. It will be a wrong in us to our posterity, to our consciences, if we shall forego this.'

'I read of a custom,' said Sir Robert Philips, 'among the old Romans, that once every year they had a solemn feast for their slaves, at which they had liberty, without exception, to speak what they would, thereby to ease their afflicted minds ; which being finished, they severally returned to their former servitude. This may, with some resemblance and distinction, well set forth our present state ; where now, after the revolution of some time, and grievous sufferance of many violent oppressions, we have, as those slaves had, a day of liberty of speech ; but shall not, I trust, be hereafter slaves, for we are free : Yet what new illegal proceedings our states and persons have suffered under, my heart yearns to think, my tongue falters to utter. They have been well represented by divers worthy gentlemen before me.'—(Sir John Eliot appears to have been the most eloquent man of his time ; and on this subject, we are told, 'set forth passionately, and rhe-

SIR ROBERT PHILIPS'S SPEECH.

torically, the grievances.')

*—'Yet,' says Philips in continuation, 'one grievance, and the main one, as I conceive, hath not been touched—which is our religion : religion, made vendible by commission, and men, for pecuniary annual rates, dispensed withal, whereby Papists may, without fear of law, practise idolatry, scoff at parliament, at laws, and all. It is well known the people of this state are under no other subjection than what they did voluntarily consent to by the original contract between king and people ; and as there are many prerogatives and privileges conferred on the king, so there is left to the subject many necessary liberties and privileges as appears by the common laws and acts of parliaments, notwithstanding what these two sycophants have prated in the pulpit. Was there ever yet king of England that directly violated the subjects' liberty and property, but their actions were ever complained of and redressed ?' He gives some instances and proceeds. 'For the oppression under which we groan, I draw them under two heads : Acts of power against law, and judgments of law against our liberty. Of the first sort are, strange instructions, violent exactions of money thereupon : imprisonment of the persons of such who, to deliver over to their posterity the liberty they received from their forefathers, and lawfully were in possession of, refused so to lend ; and this aggravated by the remediless continuance and length thereof ; and chiefly the strange, vast, and unlimited power of our lieutenants and their deputies, in billeting of soldiers, in making rates, in granting warrants for taxes as their discretions shall guide them ; and all this against the law. These last are the most insupportable burdens, that, at this present, afflict our poor country, and the most cruel oppression that ever yet the kingdom of England endured. These upstart deputy-lieutenants, of whom perhaps, in some cases and times, there may be

* See Mr. Forster's *Biography of Sir John Eliot*, vol. ii. p. 120, and pp. 123—133.

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good use, being regulated by law, are the worst of grievances; and the most forward and zealous executioners of those violent and unlawful courses which have been commended unto them; of whose proceedings, and for the qualifying of whose unruly power it is more than time to consult and determine. We are grown like the Turks, who send their janizaries, that place the halbert at the door, and there he is master. Judgments of law against our liberty there have been three, each latter stepping forwarder than the former, upon the right of the subject; aiming, in the end, to tread and trample under foot our law, and that even in the form of law. The first was the judgment of the *postnati*, the Scots, wherein a nation, which I heartily love for their singular good zeal in our religion, and their free spirit to preserve our liberties far beyond many of us, is made capable of any the like favours, privileges, and immunities, as ourselves enjoy; and this especially argued in the Exchequer Chamber by all the judges of England. The second was the judgment, twice after damned in this house, upon impositions in the Exchequer Court by the barons, which hath been the source and fountain of many bitter waters of affliction unto our merchants. The third was that fatal late judgment against the liberty of the subject, argued and pronounced but by one judge alone,—I can live, although another who has no right be put to live with me; nay, I can live, although I pay excises and impositions more than I do; but to have my liberty, which is the soul of my life, taken from me by power, and to have my body pent up in a gaol, without remedy by law, and to be so adjudged—O improvident ancestors! O unwise forefathers! to be so curious in providing for the quiet possession of our laws and the liberties of parliament, and to neglect our persons and bodies, and to let them lie in prison, and that during pleasure—remediless! If this be law, why do we talk of liberties? Why do we trouble ourselves with a dispute about law, franchises, property of goods, and

the like? What may any man call his own, if not the liberty of his person? I am weary of treading these ways, and therefore conclude to have a select committee deputed, to frame a petition to his majesty, for redress of these things, which being approved by the house may be delivered to the king; of whose gracious answer we have no cause to doubt, our desires being so reasonable, our intentions so loyal, and the manner so humble; neither need we fear this to be the critical parliament, as was insinuated, or this a way to destruction; but assure ourselves of a happy issue. Then shall the king, as he calls us his great council, find us his true council, and own us his good council. Which God grant.'

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The speech of Sir Thomas Wentworth, while it presents a shocking but just picture of the times, forms a remarkable contrast with his after conduct. 'These illegal ways,' says he, 'are punishments and marks of indignation: the raising of money by loans, strengthened by commission, with unheard-of instructions—the billeting of soldiers by the lieutenants have been, as if they could have persuaded Christian princes, nay worlds, that the right of empire was to take away goods by strong hand; and they have endeavoured, as far as was possible for them, to do it. This hath not been done by the king, under the pleasing shade of whose crown I hope we shall ever gather the fruits of justice, but by projectors. These have extended the prerogative of the king beyond its just limits, which mars the sweet harmony of the whole. *They have rent from us the light of our eyes; enforced companies of guests worse than the ordinances of France; violated our wives and daughters before our faces; brought the crown to greater want than ever it was, by anticipating the revenue; and can the shepherd be thus smitten, and the flock not scattered? They have introduced a privy council, ravishing at once the spheres of all ancient government, imprisoning us without bail or bond. They have taken from us, what shall I say?*

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Indeed, what have they left us? They have taken from us all means of supplying the king, and ingratiating ourselves with him, by tearing up the roots of all property.'

The court party were extremely moderate. They did not deny the justice of the complaints, but pleaded necessity as the only justification. And, as they urged the house to grant supply, they argued that it should precede measures for the future security of public freedom, both because the kingdom was in imminent danger, and because it would be more honourable to the king. 'My intent,' said Secretary Cooke, 'is not to stir but to quiet, not to provoke but to appease; my desire is, that every one resort to his own heart, to reunite the king and the state, and to take away the scandal from us. Every one speaks from the abundance of his heart; I do conclude out of every one's conclusion, both to give to the king and to redress grievances; all the difference is about the manner. We are all inhabitants of one house—the commonwealth. Let everyone amend his own house, for something is amiss in every one; but, if all the house be on fire, will ye not think of mending what is amiss? Will ye not rather quench the fire? The danger all apprehend; the way that is propounded I seek not to devise. Illegal courses have been taken, it must be confessed; the redress must be by laws and punishments. But, withal, add the law of necessity. Necessity hath no law; you must enable the state to do what you do by petition require. It is wished that we begin with grievances. I deny not that we prepare them; but shall we offer them first? Will not this seem a condition with his majesty? Do we not deal with a wise king, jealous of his honour?'

Having assumed this ground, the ministers of the crown importuned for supply; but the house, while they were justly moved by the exigencies of the state, determined that the redress of grievances should not be postponed to his majesty's demand. The grievances detailed before a committee were reduced to six heads:—1, Attendance

at the Council-Board ; 2, Imprisonment ; 3, Confinement ; 4, Designation to foreign employment ; 5, Martial law ; 6, Undue proceedings in matter of judicature. And here it may not improperly be observed, that upon enquiry into the judgment against the refusers of the loan, it appeared that the attorney-general had prepared a draft of a judgment to be specially entered on record, which Sir Robert Philips well observed, was ‘made by some that desired to strike them all from their liberties.’ But it appeared that the judges, alarmed for an after-inquisition of parliament, had refused to make the entry, as a thing altogether unusual in the case of a habeas corpus refused ; and that the attorney-general himself, at the approach of that assembly, had desisted from his importunities. ‘This draught of a judgment,’ said Sir Edward Coke, ‘will sting us, *quia nulla causa fuit ostenta* ; being committed by the command of the king, therefore he must not be bailed ! What is it but to declare upon record, that any subject committed by such absolute command, may be detained in prison for ever ? What doth this tend to but the utter subversion of the choice liberty and right belonging to every free-born subject of this kingdom ? I fear, were it not for this parliament that followed so close after that form of judgment was drawn up, there would have been hard putting to have had it entered. *But a parliament brings judges, officers, and all men into good order.*’

On the subject of designation for foreign employment, Sir Peter Hayman stated his own case :—That when a loan was demanded, he answered that they might take his estate, but that he would not give ; that, upon being called before the lords of the council, they imputed his refusal to disaffection, when he replied, that his life and estate were at the service of his country ; that they then threatened him with foreign and expensive employment, intending at first to have despatched him as a soldier, but that they afterwards adopted the milder expedient of sending him as an attendant on an ambassador. The illegality of the measure no one was hardy enough to dis-

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pute. The great oracle of the law, Sir Edward Coke, well remarked, that 'no restraint, be it ever so little, but is imprisonment, and foreign employment is a kind of honourable banishment. I myself,' continued this venerable lawyer and statesman, now in his eighty-second year, 'was designed to go to Ireland. I was willing to go, but hoped, if I had gone, to have found some Mompessons there.' 'If you grant this liberty,' said Sir John Eliot, 'what are you the better for other privileges? What difference is there between imprisonment at home and constrained employment abroad? It is no less than a temporal banishment.'

Petition of
right.

The Commons entered into resolutions declaratory of the rights of the people, and appointed a conference with the Lords upon the late infringements of liberty, in order that both houses might concur in a petition to the Throne, founded upon Magna Charta and other statutes, strengthened on the point of personal liberty by twelve direct and thirty-one indirect precedents. The object was to obtain the king's assent in parliament, that it might have the force of a special enactment, and as such be enrolled amongst the statutes; and as nothing was required but a recognition of the laws, to the protection of which the people had an undoubted title, it received the name of the petition of right. The conference was conducted with the utmost ability, and the subject demonstrated with a precision and clearness which prevented the possibility of reply. It may here not be improperly remarked, that the debates of this period are pregnant with profound constitutional knowledge and powerful reasoning: men were now deeply interested in the momentous questions agitated, and, in their ardour to convince and persuade, departed from that impertinent pedantry and those far-fetched conceits which had distinguished the popular speaking of the last reign, and gained for Lord Bacon himself the prize of eloquence.*

* Rush. vol. i. p. 476 *et seq.*; *Old* Cobbett's *Parl. Hist.* vol. ii. p. 217
Parl. Hist. vol. vii. p. 339 *et seq.*; *et seq.*; Whitlocke, p. 9; Franklyn.

Parliament, while this grand question occupied its attention, was not inattentive to other matters. The king's insincere dealing in regard to recusants, even his apologists admit; but they excuse his conduct in this instance by alleging the unreasonable prejudice of the people against that obnoxious body. The apology, however, ill accords with the line of policy now pursued by the ministers of the Crown, who, for the attainment of their present object, endeavoured to alarm parliament by an account of the alleged audacious proceedings of Jesuits, of whom it was said that they had a hierarchy of their own, plotting the ruin of the kingdom, and had also resolved to have a parliament. That there might no longer be a pretext for connivance at their religion, and room for their destructive plans, both houses agreed in a petition to the Throne, which, though it was unhesitatingly granted, for the purpose of eliciting supply, met with the fate of former engagements of the sovereign to the same effect. The Commons likewise manifested a resolution to provide for the exigencies of government, by voting five subsidies, the largest supply ever granted in parliament. Their generosity is said to have moved the king even to tears, who declared that he had fallen into a distaste with parliaments, but was now reconciled to them again; yet it produced no alacrity to conciliate the affections of the kingdom, and remove their fears, by an ample acknowledgment of their rights. And in a message which he sent to the Commons by Secretary Cooke, he displayed a want of dignity no less unbecoming than it was surprising in one who entertained such extravagant notions of his office. The secretary informed the house, doubtless with his majesty's approbation, that the proposed grant gave satisfaction to the duke; but they, more regardful of the royal honour than the king himself, reprehended the indecorous junction of a subject's name with the sovereign's.

p. 233 *et seq.* MS. copy of the Argument by Sir Ed. Coke upon the liberty of the subject, in *Adv. Lib. State Trials.*

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Though the Commons voted the supply, they withheld the bill till they should extort such a solemn recognition of their rights as might thenceforth remove every apology for invading them. They presented a petition against billeting of soldiers, in which they detailed the enormities that had been committed by the licentious military, and complained that 'few of their enormities had been so much as questioned, and fewer according to their demerits punished;' and they gave orders to the lawyers in the house to prepare the bill, denominated the Petition of Right, which contained an ample acknowledgment of their general privileges. When the bill so prepared had been passed by the Commons, and sent up to the Lords for their concurrence, that body proposed some alterations which would have rendered it nugatory, or rather would have authorised the arbitrary measures of the Crown. That in ordinary cases the established legal course should be followed; but that in extraordinary the king should have, for the general good, a right of commitment, without showing the cause, though, however, he ought to disclose it as soon as possible. While the Lords would have passed a bill conferring a power of such a description, and at such a season, they committed Serjeant Astley for maintaining arbitrary principles. The Commons could not agree to these alterations; and Charles, perceiving their intention, and anxious to evade any measure that cramped him in the exercise of those principles on which he had resolved to govern, pressed by repeated messages for the bill of subsidy, alleging that the necessities of state could not admit of delay; declaring that he held Magna Charta and the other statutes to be in force, and would govern according to law; asking them whether they could not rely on his word; and latterly intimating that they must determine immediately either upon supplying his wants or flatly refusing, as he meant to close the session; for that, while he would rank himself with the best kings, by showing that he had no intention to invade

or impeach their lawful liberties, he would not, by new explanations, interpretations, expositions, or additions of any kind, yield to any encroachment upon that prerogative which God had put into his hands. When these arts proved fruitless, he announced his consent to a bill declaratory of the law ; but as he even then tried to elude it, with what sincerity the message was sent is doubtful. ‘What need of a new law to confirm the old,’ said the lord keeper, in delivering the king’s answer to the speaker’s speech, ‘if you repose confidence in his majesty’s declaration? Your greatest trust and confidence must be in his grace and goodness, without which nothing ye can frame will be of safety or avail to you.’ The Commons, unmoved by this address, persisted in their purpose, and Charles sent another message, desiring them to rely on his word. This also failed, and he wrote a letter to the Lords, containing sentiments similar to those which had been stated by them in their propositions to the lower house : that, as he was desirous of nothing more than to advance the peace and prosperity of his people, he had allowed free debates upon the highest points of his prerogative royal, which his predecessors never had ; that, in all other things, his frequent messages to the Commons had demonstrated a willingness to descend as far to the desires of his good subjects as might fully satisfy all moderate minds, and remove all just fears and jealousies ; yet that it was still insisted on, ‘that in no case whatsoever should it ever so nearly concern matters of state and government, had he or his privy council power to commit any man without the cause shown ; whereas it frequently happened that were the cause shown, the service itself would be defeated, and the cause alleged must be such as might be determined in the courts at Westminster, *in a legal and ordinary way of justice ; while the causes might be of so transcendent a nature that the judges have neither capacity of judicature nor rules of law to direct their judgment ; which happening so often, the*

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very encroaching on that constant rule of government for so many ages within this kingdom practised, would soon dissolve the very foundation and frame of our monarchy. That, as he had made fair propositions to the Commons for preserving the subject's liberty, so he thought it proper to announce that, without the overthrow of sovereignty, he could not suffer this power to be impugned. That it was not, however, his intention to stretch the royal power lent him from God, beyond the just rule of moderation, in anything which should be contrary to the laws and customs; he would neither commit any man for refusing a loan, nor for any cause which, in his judgment and conscience, he did not conceive necessary for the public good; base thoughts he hoped none would imagine incident to his royal breast. That, in all future cases, he should, upon the humble petition of the party, or address of the judges, declare the true cause of the commitment or restraint, so soon as it might be conveniently and safely declared; and that, in all ordinary cases, Magna Charta and the other statutes should be strictly adhered to.*

This did not move the lower house; but it weighed considerably with the upper, who proposed to add these words to the petition: 'We present this, our humble petition, to your majesty, with the care not only of preserving our liberties, but with due regard to leave entire that sovereign power wherewith your majesty is trusted for the protection, safety, and happiness of the people.†' The effect of this clause was too obvious to escape the notice of the Commons, who therefore solicited a conference upon it with the Lords, and so fully demonstrated its tendency, that the upper house agreed to renounce it, and to present the petition to the Throne as it originally stood.‡ Charles promised a gracious answer; yet, with that equivocation

* Rush. vol. i. p. 527 *et seq.*

† Cobbett's *Parl. Hist.* vol. ii. p. 202 *et seq.*; *Old Parl. Hist.* vol. viii. p. 1 *et seq.*

‡ Cobbett's *Parl. Hist.* vol. ii. p. 355

et seq.; *Old Parl. Hist.* vol. viii. p. 116 *et seq.*; Rush. vol. i. p. 581 *et seq.*; *Id.* p. 590; *Old Parl. Hist.* vol. viii. p. 150; Cobbett's *Parl. Hist.* vol. ii. p. 377.

which had distinguished every part of his conduct, he disappointed the general hopes, by answering it thus: 'that right be done according to law, and the statutes be put in due execution.' By thus artfully seeming to grant the petition which he meant to elude, he expected to outwit the Commons: but he ought to have known, that as an unusual answer to a bill would, at any time, have excited suspicion, deceit, after so many evasions, was impracticable; and that his answer, far from giving satisfaction, must only inspire the most dismal fears of his future government.

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First answer to the petition of right, June 2, 1628.

Thus disappointed in their hopes of obtaining a recognition of the laws for the subject's liberty, the Commons renewed their complaints against the despotical system embraced by the executive, and the miscarriages of administration, when Sir Edward Coke proposed a remonstrance upon the dangers of the kingdom, and the means of preserving it. This having been resolved upon, the house was turned into a grand committee. The king, on the other hand, sent a message to them, that as he had answered their petition in the only way he intended, he expected they would immediately finish their other business, since he had determined to end the session.* Far from complying with the royal requisition, they showed their resolution to vindicate their rights by prosecuting an individual, who, to please the prince, had prostituted his sacred calling to juggle the people out of them. Some days before, a charge had been brought against Manwaring, for his sermons, by Mr. Rouse, who not inaptly compared the doctor to Guy Faux and his fellows, as he sought to blow up parliament and parliamentary powers. The topic now was resumed. A declaration was made against the divine, and an impeachment of him presented to the Lords. The sentence was not pronounced by the upper house till some days after the passing of the petition

Manwaring impeached and sentenced.

* Rush. vol. i. p. 591 *et seq.*; *Old* Cobbett's *Parl. Hist.* vol. ii. p. 379 *et seq.*
Parl. Hist. vol. viii. p. 155 *et seq.*

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of right in proper form ; but not to interrupt the narration afterwards, we may observe, in this place, that, in spite of the doctor's tears and affected penitence, as well as impudent hypocrisy, in pretending that he never meant to persuade to a violation of the law, he was condemned to imprisonment during the pleasure of the house, to be fined 1000*l.* to the king, to make a submission, both in writing and personally, at the bar of the house, and also at the bar of the Commons, to be suspended from the ministry for three years, and to be incapable of ever holding an ecclesiastical dignity or secular office, or of preaching at Court. The peers, lastly, ordained his book to be burned.* The rigour of this sentence does not appear to correspond with the well-known powerful interest which the monarch enjoyed in the upper house. But Charles himself yielded to a temporary sacrifice of this inferior servant to divert the torrent of public indignation from the duke, and prevent a scrutiny into other measures of government. 'Truly,' says Sanderson, 'I remember the king's answer to all. He that will preach other than he can prove, let him suffer; I give them no thanks, to give me my due, and so being a parliament business, he was left by the king and church to their sentence.†' This was the language of a prince who had not only listened to the doctrine with approbation, but had enjoined it, and even suspended the primate for refusing to license the printing of the sermons. Nay, such was the inconsistency of this monarch, that he at the same moment authorised Laud, and Mountaigne, bishop of London, to justify their licensing of the sermons, by alleging that they acted by his command. Buckingham, with the Earls of Suffolk, Dorset, and Montgomery, bore evidence to the statement, while the latter declared that

* *Old Parl. Hist.* vol. viii. p. 151 *et seq.*; *Cobbett's Parl. Hist.* vol. ii. p. 377; *Rush.* vol. i. pp. 585, 586, 593 *et seq.* Manwaring desired of the upper house, that as 'his book consisted of many conclusions, the spiri-

tual lords might be judges of the inferences and logical deductions therein.' But the artful device failed in its intended effect.

† Sanderson's *Charles I.* p. 115.

he was present when the command was given, and that Laud showed a reluctance in the business, and advised his majesty to think better of it. Such was the defence of Laud, the principal instrument in the affair !* But, though Charles apparently withdrew his countenance for a season, he neither abandoned nor neglected Manwaring : immediately after the prorogation, he pardoned all his errors, and promoted him to a good living. Nor did his gratitude end till he had rewarded this obsequious divine with a bishopric—the price for which he had been accused as willing to exchange a good conscience. But this is best told in the language of Heylin, who, after narrating the proceedings against Manwaring, says, ‘a heavy sentence I confess, but such as did more affright than hurt him. For his majesty, looking on him in that conjuncture as one that suffered in his cause, preferred him first to the parsonage of Stamford-Rivers in Essex, void not long after by the promotion of *Montague* to the see of Chichester, after to the deanery of Worcester, and finally to the bishopric of St. David’s. *This was indeed the way to have his majesty well served ;* but such as created some ill thoughts in the Commons for his majesty’s over-indulgence to him !’†

On the 5th of June, only two days posterior to the last message, another came to the Commons from the king, announcing, that as he meant to keep the day he had formerly mentioned, the 11th, for the prorogation, he required them to entertain no new business which might consume their time, or lay any scandal or aspersion upon the government or its ministers. So peremptory a message struck a damp into the house. ‘I perceive that towards God and towards man,’ said Sir R. Philips, ‘there is little hope after our humble and careful endeavours, seeing our sins are so

* *Old Parl. Hist.* vol. viii. p. 213. Laud was terribly alarmed for an impeachment against himself; but Charles bade him be under no uneasi-

ness till he saw him forsake his other friends. Heylin’s *Life of Laud*, p. 180; Laud’s *Diary*.

† Heylin’s *Life of Laud*, p. 180.

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many and so great : I consider my own infirmities, and if ever my passions were wrought upon, then now this message stirs me up especially : When I remember with what moderation we have proceeded, I cannot but wonder to see the miserable strait we are now in. What have we not done to have merited ? Former times have given wounds enough to the people's liberties. We came hither full of wounds, and we have cured what we could, and what is the return of all but misery and desolation ? What did we aim at but to have served his majesty, and to have done that which would have made him great and glorious ? If this be a fault, then are we all criminous. What shall we do since our humble purposes are thus prevented, which were not to have laid any aspersion on the government, for it tended to no other end but to give his majesty true information of his and our danger ? And to this we are enforced, out of a necessity of duty to the king, our country, and to posterity : But we being stopt, and stopt in such manner as we are enjoined, so we must now leave to be a council. I hear this with that grief, as the saddest message of the greatest loss in the world. But let us still be wise, be humble ; let us make a fair declaration to the king. Let us presently inform his majesty, that our firm intents were to show him in what danger the commonwealth and state of Christendom stand ; and, therefore, since our counsels are no better acceptable, let us beg his majesty's leave, every man to depart home ; and pray to God to divert those judgments and dangers which too fearfully, and imminently, hang over our heads.' Sir John Eliot, according to his natural bent, rose in a more vehement strain, and was about to name the duke as the author of their calamities, when he was stopped by the speaker, who, starting from his chair with tears in his eyes, told the house that he was commanded to interrupt any one who laid aspersions upon ministers of state. A melancholy silence succeeded, till Nathaniel Rich breaking it, observed, that however submission might tend to their

individual safety, it did not to that of their constituents, whose rights they were bound to protect. 'Some instruments desire a change,' said he, 'and shall we now sit still and do nothing, and so be scattered? Let us go to the Lords, and show our dangers, that we may then go to the king together.' Some, by way of palliating the royal conduct, signified that a speech by Sir John Eliot had given offence, but the house declared that nothing undutiful had been spoken. The question then was, whether they should go directly to the king with a remonstrance, or apply for the concurrence of the Lords. But Sir Edward Coke told them, that as their own privileges, in the preservation of which the Lords were not concerned, were now violated, an application to that body was not the course. He reminded them of former instances of parliamentary impeachment of ministers, and maintained it to be the province of parliament to moderate the prerogative, and correct every abuse; and declaring that if they faltered now, God would never prosper them. He then, in spite of the royal injunction, named the duke as the cause of all their miseries, pronounced him the grievance of grievances, and remarked that, till the king were informed of it, they could neither continue together, nor depart with honour. This roused others. One declared that, as high admiral, Buckingham had ruined the shipping, as well as he had undone their liberties at home; and that his treachery would probably overthrow his majesty, from whom he was so eager to conceal the truth, that he destroyed all who uttered it. Others said that there were Papists in all branches of public employment, and asked what good could be intended when the king's power was used by those who wished the utter subversion of their religion? Selden proposed a declaration of grievances, under several heads, in the last of which the present distraction was imputed to the duke's fears of being called to an account by them; and he said, that though they had hitherto cast a mantle on what was done last parliament, yet that, since

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they had been driven again to look to that man, they ought to renew the charge, and demand judgment, which, from the insufficiency of his answer, might be expected even upon it. The house then entered into several resolutions; but while it was moved to put the question, whether the duke should be named as the primary cause of the grievances, the speaker begged leave to retire, and soon returned with a message to adjourn. Charles, now perceiving that his former message required qualification, sent another next day, that he never meant to infringe their privileges. The debate upon privileges was then resumed, and the house now received information of the commission for excise, with the importing of Dutch books to assist the council in regulating the intended duties, and likewise of the commission for German horse, arms, &c., and that two ships, to the loss of their voyages elsewhere, had been impressed for the purpose of bringing the horse over. On this subject it was observed by one member, Mr. Parker, ‘that the intent of bringing over those German horse was to cut our throats, or else keep us at their obedience.’*

Petition
of right
granted in
proper
form,
June 7.

Charles saw at last, that the proper answer to the petition of right could no longer be withheld, and therefore, to still the ferment, he granted it in the usual form, ‘*soit droit fait, comme il est désiré*,—an answer which was received with the most unbounded joy throughout the nation, though the hypocrisy of the king on the occasion (he declared that the answer was no more than he had granted before, and that his maxim was, ‘that the people’s liberties strengthen the king’s prerogative, and the king’s prerogative is to defend the people’s liberties,’) ought to have moderated their joy.† Indeed, he did not grant the petition without first having consulted the judges as to whether it would really restrain him. The answer was

* Cobbett’s *Parl. Hist.* vol. ii. p. 408; *Old Parl. Hist.* vol. viii. p. 200.

† *Old Parl. Hist.* vol. viii. p. 201 *et seq.*; Cobbett’s *Parl. Hist.* vol. ii. p. 408 *et seq.*; Rush. vol. i. p. 613.

consentaneous with his wishes. Charles first propounded the question whether or not he might lawfully commit without showing cause ; the unanimous answer was that 'by the general rule of law the cause of the commitment by his majesty ought to be stated, yet some case may require such secrecy that ye king may commit a subject without showing ye cause for a convenient time.' Entreated by all the judges, he then put the query whether, if he granted the petition, he should be concluded, and the answer of those worthies was thus: 'Every law after it is made hath his exposition, and so this petition and answer must have an exposition, as ye case and ye nature thereof shall require to stand. The justice which is to be left to the court of justice to determine, so cannot particularly be discerned untill such case shall happen ; and although ye petition shall be granted, there is no fear of conclusion as is intimated in ye question subscribed by all the judges.' Could such a government stand?

It has been affirmed by Mr. Hume that the royal assent to this petition produced such a change in the government as was almost equivalent to a revolution. But it never was considered in that light by our ancestors, who deemed it merely a confirmation of the acknowledged law of the land, which had been so grossly violated : even Clarendon declares that it was 'of no prejudice to the Crown.'* The learned historian admits that the great charter and the other statutes were sufficiently clear in favour of personal liberty, and that literally this was nothing farther than a recognition of them ; but he alleges that all the kings of England had ever, in cases of necessity, been accustomed *at intervals* to elude those statutes. Now, if it were at intervals, and in cases of necessity only, that the law was eluded, it follows indisputably that the general tenor of the government was conformable to it, and that these were only exceptions to the common rule. The debates on this

* Clarendon's *Hist.* vol. i. p. 10.

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subject, however, which are pregnant with legal argument and research, ought of themselves to have satisfied him that in times which he pronounces the most arbitrary there had been individuals courageous enough to demand their rights in courts of law, and that those tribunals had never, on any occasion, denied justice : that not one precedent could be adduced to the contrary to palliate the present proceedings. But his inconsistency does not end here : for it is impossible to conceive how the petition of right could be the greatest concession which an English sovereign ever made, since he admits that it merely confirmed statutes which, though occasionally eluded, were sufficiently clear in favour of personal liberty ! Had it been equivalent to a change in the constitution, it must likewise have been productive of a corresponding change of measures, for it is an insult to talk of good laws if the people derive no benefit from them : yet, unfortunately for the truth of Mr. Hume's remark, the future government of this prince was, as a whole, no less revolting, if not more so, to every notion of liberty or principle of law than any portion of his history that we have hitherto detailed. And surely, unless we allow that a prince who recognises the public rights on parchment, ought to have a licence to govern without law, to magnify the vast importance of the concession, is not to adopt the most judicious defence of his conduct ; since it bereaves him of an apology for those subsequent acts of his reign which it is our province to relate. The people, nay, in the course of a few months their representatives likewise, who had most strenuously exerted themselves to procure this declaration of law, in vain applied for its protection. 'So hard a thing is it,' says Heylin, in insolent triumph at such a flagrant denial of justice, 'to find a cord so strong as to bind the prerogative, when kings have either power or will to make use thereof.' *

* Heylin's *Life of Laud*, p. 198.

The bill of subsidies was no longer delayed, yet the Commons did not rest satisfied with a bare declaration of the law: they resolved not to desist from their labours till they had obtained the benefit of it, and remedied the evils of the commonwealth. The debate was resumed upon the commission for the excise, and a conference having been agreed to, and obtained, with the Lords, both houses concurred in an application to the Throne against so direct a violence to every constitutional principle. The Commons also determined to proceed with their remonstrance: 'King James,' observed one, 'was wont to say that he knew that by parliaments, which otherwise he could never have known.' This remonstrance embraced a variety of topics: the encouragement of Papists, and employment of them in offices of trust, notwithstanding the most solemn promises to the contrary: the protection and promotion of Arminians, 'the common disturbers of Protestant churches,' of whom Neal and Laud are the patrons; together with the diffusion of their writings on the one hand, and, on the other, the silencing of orthodox preachers, excluding them from benefices, and suppressing their writings: the fears entertained of innovation and change of government, from the arbitrary measures lately adopted: the billeting of soldiers, who, instead of being disbanded, had been lately reinforced—a source of jealousy to the people: the strange and dangerous purpose of bringing in German horse, which they, with somewhat more complaisance than truth, say, 'would have turned our doubts into despair, and our fears into a certainty of confusion, had not your majesty's gracious message comforted us by the assurance of your royal word that they neither are, nor were, intended for any service in England:' the commission for excise: the frequent breaches with parliament: the taking of tonnage and poundage without the authority of the legislature: the standing commission of general to Buckingham in time of peace: the dismissal of faithful officers from the bench and other departments:

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the miscarriages at Cadiz and the Isle of Rhee, the last of which, it was alleged, though doubtless with exaggeration, had cost seven thousand lives and a million of money: the unprovided state of the forts, and the numerous captures of English vessels in consequence of the seas being unguarded, a circumstance which threatened the annihilation of commerce, &c.*

In this place it may be proper to mention another affair which aggravated the misconduct of the executive. When the former parliament was dissolved to prevent the prosecution of Buckingham, the king ordered an information against his favourite to be filed in the Star Chamber. This, which was a mere trick, intended to deceive the people by the appearance of a trial, imposed upon none, while it leaves the less apology for the dissolution of parliament, since the same prince who thought it necessary to satisfy the public by the show of justice, had no right to quarrel with them for demanding the reality: but, as if he had been studious of an opportunity to insult the Commons by a fresh mark of attachment to a favourite of whom they so loudly complained, he chose this critical moment for commanding the information to be taken off the file, alleging that he was satisfied of the duke's innocence.†

The commission for the excise was now cancelled, yet in a manner that justified, instead of condemning, the measure: for the lord keeper had the assurance to state that it was necessary at the time, though it was now no longer requisite, after the supply from parliament.‡ All other redress seemed hopeless.

But the great question which remained for discussion was that of tonnage and poundage, a question which gave rise to a remonstrance, and occasioned the immediate prorogation of the parliament. Tonnage and poundage were

* Rush. vol. i. p. 612 *et seq.*; *Old Parl. Hist.* vol. viii. p. 214 *et seq.*; Cobbett's *Parl. Hist.* vol. ii. p. 416 *et seq.*

† Rush. vol. i. p. 626.
‡ *Id.* p. 628; Cobbett's *Parl. Hist.* vol. ii. p. 428 *et seq.*; *Old Parl. Hist.* vol. viii. pp. 232 and 5.

and duties or customs on exports and imports, to enable the sovereign to protect commerce. These had, anciently, been granted to the sovereign for a short period, only a year at a time, till Henry V., as a recompense covering his right to France, obtained them for his reign under a special proviso that it should not be held a precedent in the case of future kings; 'but yet,' says Edward Coke, 'all the kings after him have had it for so forcible is once a precedent fixed in the Crown, add *proviso* you will.*' The statutes which conferred, however, still reserved the power of withholding; and only was this maintained, that in the last reign those who had drawn the duties without a legislative enactment: when the bill was passed, were afterwards questioned by

1 *Inst.* p. 61. 4th *Inst.* p. 32. VI. did not obtain the grant till the 31st of his reign. In 1 there was a grant for two years; in the 9th another for years, &c. *Ibid.* But it is necessary to correct a mistake Hume in point of fact, which is the very essence of this question. 'The parliament,' says he, 'did not grant the duty of tonnage and poundage to Henry VIII. till the 1st of his reign: yet this prince, did not then raised his power to the greatest height, continued, throughout that whole time, to levy the duties. The parliament, in their opinion, blame the merchants who refused to make payment to the king; and though one expresses that bill may seem ambiguous, they employ the plainest language calling tonnage and poundage the king's due, even before that it was conferred on him by parliamentary authority.' Chap. 51. This argument proceeds upon an utter misapprehension of the meaning of the act of 1 Henry VIII. c. 14, repeated by the historian; yet such is the better apology for, than for, his errors. The duty of tonnage and poundage had been granted by a statute passed in the

1st of that reign, 1 Henry VIII. c. 20, and the act referred to by Mr. Hume merely re-enacted a statute passed in the 12th of Edward IV. c. 3, ordaining the forfeiture of the goods in case of non-payment of the duties. This statute had been re-enacted for the life of the late king, and as the duties had been evaded under Henry VIII. the legislature deemed it expedient to re-enact the statute for the life of that monarch also. As, however, the act of the 1 Henry VIII. c. 20 is not printed in the edition of the statutes entitled *The Statutes at Large*, (it now is in that splendid work, entitled *The Statutes of the Realm*,) there is an excuse for Mr. Hume's error. Yet the supposed ambiguity to which he alludes might have half convinced him of his mistake, while, had he looked to the stat. 12 Edward IV. c. 3, which was re-enacted, he would have seen that it did not grant the duties, but merely ordained a forfeiture of the goods for evading them, and referred to a statute passed in the 3rd Edward IV., by which the duties were conferred upon the king for life. Had he consulted the 4th *Inst.* too, he would have found the words quoted for the statute 1 Henry VIII.

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Parliament
prorogued
on account
of tonnage
and pound-
age.
June 28,
1628.

the Commons for so irregular a proceeding.* Though the parliaments of former times had chosen to repose such confidence in the reigning monarch as to grant the duties during his life, it did not follow that after times were to be tied down by the precedents, particularly when they perceived a decided disposition in the prince to overturn the constitution, and when the want of money afforded the only hope of meetings of the legislature. But there were still stronger grounds for adopting a different course. James, and he had been followed by his son, had arrogated the right of altering those duties at pleasure; a power to which none of his predecessors had ever pretended, and his venal judges had pronounced such a right to be inherent in the Crown; whence the commerce of the kingdom must have soon depended on the will of the sovereign. Though the evil was yet in infancy, it had wrung grievous and well-founded complaints from the merchants; while, to complete the mischief, the money had been diverted to purposes very different from the defence of the seas, which had been so neglected that the very coasts were infested with pirates, who carried off the shipping in the sight of land. The true way to prevent the arrogation of a right to alter the duties, was to keep before the royal eye that the title to draw such duties at all sprang from the legislature. Hence, in the first of this reign, the Commons had passed a bill giving the duties for one year only; but the Lords, through the dexterity of Bishop Williams, had thrown it out,† and Charles had ever since, without the semblance of legislative authority, levied them, as annexed of right to his office. Apprised now that the Commons were preparing a remonstrance against this assumed power, he suddenly ended the session, declaring his knowledge of their intention as the cause; and that he neither understood the petition of right to trench upon this branch of his revenue, which he drew by the force of his prero-

* *Old Parl. Hist.* vol. viii. p. 254.
Rush. p. 644.

† Hacket's *Life of Williams*, part
ii. p. 17.

gative, nor would submit to have it questioned.* Charles, as we have seen, intended still farther to raise the duties immediately, without the intervention of the legislature.†

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No sooner was parliament prorogued, than he afforded some striking proofs of his insincerity in granting the petition of right, and of its efficiency to protect the franchises of the people. Fifteen hundred copies had already been printed at the desire of both houses: these were suppressed by orders from the king, and fresh copies with his first answer, which had excited such discontent and apprehensions, were distributed throughout the kingdom.‡—‘An expedient,’ says Mr. Hume, ‘by which Charles endeavoured to persuade the people that he had nowise receded from his former claims and pretensions, particularly in regard to levying of tonnage and poundage.’ It is impossible to divine the estimate which this prince had formed of his subjects’ understandings, when we find him attempting so palpable an imposture. All the intelligent portion of the community, whom alone copies of this memorable statute were likely to reach, had watched the progress of the bill with the most painful solicitude, having been actuated by all the hopes and fears which his various evasions were so calculated to inspire; yet he expected to deceive them in regard to what had actually occurred! Had his hope of success, however, with a part of the people, been even well-founded, still he might have remembered that parliament, which was to reassemble in the course of a few months, could not be deceived, and would not only expose the deception, but, after so flagrant an imposture, could never trust his professions more. Indeed, one would have imagined that a prince who proclaimed himself, and appeared to be, so jealous of his honour, would have felt

Conduct of
Charles in
regard to
the print-
ing of the
petition of
right.

* *Old Parl. Hist.* vol. viii. p. 241 ;
Rush. vol. i. p. 628 *et seq.* ; *Journals.*

† *Rush.* vol. i. p. 643 ; *Cobbett's
Parl. Hist.* vol. ii. pp. 410 and 435
et seq.

‡ See note at the end of last chapter.

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no small degree of reluctance at meeting again, in all the dignified tone of a sovereign, a body of men to whom he had given so bold and indisputable a proof of insincerity. And it seems a little extraordinary, after this, that his sincerity should have been keenly advocated by the historian whose words we have just had occasion to quote, or that his yielding to the petition should have been magnified as a consent to something almost equivalent to a revolution, when it is so unquestionable that he never meant to observe it !

Arbitrary
proceed-
ings dur-
ing the
proroga-
tion of par-
liament.

The whole government of Charles corresponded with this attempt at imposture. Some merchants were committed to the Fleet, while their goods were seized, for refusing payment of duties on merchandize originally imposed at the mere will of the prince. Informations, too, were preferred against the refractory, as if the king had acted according to law, and the judges declined to hear the defendants on a ground which they pronounced to be already adjudged by a decision in the former reign. Others were imprisoned for resisting the demand of tonnage and poundage as never having been granted by parliament, and the council expressed their disapprobation of a *habeas corpus* granted to an individual thus deprived of personal liberty, while all legal discussion upon the lawfulness of the impositions was interdicted. The Star Chamber, too, arbitrarily adjudged one Savage to lose his ears. Such was the civil government, and the religious was just a repetition of everything which had been so loudly complained of, and of which the people had so often been promised redress. Recusants were compounded with at easy rates, and the wealthiest altogether screened from the legal penalties, by letters of grace and protection. Under the pretext of preventing unprofitable disputes about Arminianism, Montague's books were called in, and all publications that had a tendency to revive the difference prohibited : but the proclamation was not issued till the books in favour of the doctrine

re circulated beyond the risk of seizure ; and the consequence intended necessarily followed—that the answers were suppressed, and the printers of them questioned before the high commission. The pardon and promotion Manwaring bespoke, too, on the part of the king, a resolution to avoid no opportunity to evince his contempt of the parliament, to which he was so soon to apply pecuniary aid.*

Wentworth had, in the last session, affected the part of patriot ; yet, during the prorogation, he obtained title and place, for which he had long been truckling. By the medium of Weston, the treasurer, he was reconciled to Buckingham, whose jealousy at his intimacy with Williams had been the cause of the difference, as well as the assumed patriotism of Wentworth, and was instantly created a baron and privy councillor. In Michaelmas following he was made a viscount, and lord president of the council of the North,—a place which he had been promised at the outset.† Statesmen who pretend to character either soften their desertion of their principles and party, by setting out with an affected tone of moderation in regard to the measures of the executive, as if their former heat had proceeded from youthful ardour and inexperience,—cooling towards their own party, and gradually approaching to the principles of the court ; or make their tergiversation with some pretended plea of conscience, as that they had at last discovered that the measures entertained by them were visionary and impracticable, the offspring of inexperience and a sanguine dispo-

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Wentworth gained over to the Court.

Rush. vol. i. p. 633 *et seq* ; *William's Life of Laud*, p. 195 ; also 38, about the powers arrogated by Charles.

Essay towards the Life of Strafford, Ratcliffe ; *Letters D'Estades* ; Heyrick's *Life of Laud*, p. 194. 'Sir Thomas Wentworth and Mr. Wandsford,' says Howell, in a letter, 'are now great courtiers lately, and are from Westminster Hall to

Whitehall (Sir John Saville, their countryman, having shown them the way with his white staff). The Lord Weston tampered with the one, and my Lord Cottington with the other, to bring them about from their violence against the prerogative ; and I am told the first of them is promised my lord's place at York, in case his sickness continues,' p. 200 (see other Letters) *Id.*

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sition ; or that the party with whom they had co-operated aimed at conclusions and were guided by motives which they never had suspected : that the circumstances under which they had opposed the court were changed, or the tendency of the principles pursued by their party was different from what they had apprehended : or that, from the popular spirit now afloat, it was, as encouraging a rage for innovation which threatened general anarchy, no longer safe to prosecute the policy they had originally adopted, and which they still approved of in the abstract. But, as Wentworth had turned patriot merely out of personal resentment at the idea of his merits not being duly appreciated by the favourite, whom he was ready to serve on any terms, so now, without the appearance of an apology, he at once accepted of honour and place, and lent all his powers to support measures which he had just arraigned as the summit of tyranny. Considering the extreme pride of the man, it is scarcely possible to figure his feelings on sitting in the upper house of parliament as the ministerial advocate of that policy which, in the preceding session, only a few months before, he had so violently condemned in the lower.

Fruitless
attempts
to relieve
Rochelle.

The attempts towards the relief of Rochelle were so disgraceful as to excite a strong suspicion of treachery in the British cabinet. During the session of parliament, the duke's brother-in-law, the Earl of Denbigh, had been despatched with a fleet to succour that wretched town ; but, instead of effecting his object, he abandoned it without the attempt, tamely submitting to insult from the French, though his armament not only warranted, but should have induced him, to hazard an action. In the meantime, the project of Richelieu to besiege Rochelle by circumvallations including a mole of 1400 yards in length across the mouth of the harbour, leaving room only for the ebb and flow of the tide, went on without obstruction, and threatened ruin to the gallant defenders of the town.* After the prorogation of parliament, how-

* Rush. vol. i. p. 586.

ever, Buckingham determined himself to head an expedition for the relief of Rochelle, when he was assassinated at Portsmouth, whither he had gone to attend the embarkment of the troops.

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The assassin was one John Felton, of a good family in Suffolk. He had served as a lieutenant in the expedition to the Isle of Rhee; but who, having lost his captain there and been disappointed in his suit for the company, which he conceived belonged of right to him, had quitted the army in disgust. He was of a diminutive stature, yet of an energetic though meagre frame, with ghastly features denoting habitual melancholy. His manners were extremely reserved; his whole course of life and conversation serious and religious. But his religion was infected to fanaticism by the gloominess of his temper; and as he agreed with the people at large in considering Buckingham the enemy of the civil and ecclesiastical establishments of his country, his resentment, unmollified by the usual unburthening of the heart in the intercourse of society, fermented to a peculiar degree in his unsocial bosom. Whether this were heightened by a direct feeling of disappointment in his expectation of a company, it is not easy to determine. Though he died with the utmost penitence for his crime, he disclaimed any personal cause of hatred, and declared that his want of preferment had not proceeded from the duke, by whom he had ever been treated with respect. But the disappointment, to whatever source he ascribed it, as it stung him with chagrin and left him without employment, must, by corroding his heart, have, the instant his feelings got vent upon a particular object, in some measure prepared his distempered brain for the horrid notion that it would be meritorious in the individual to destroy the public delinquent. Yet, in a breast unacquainted with crime, and most virtuously educated, the idea had much to encounter from better propensities; and he imagined that he had overcome his first suggestion, till the re-

Assassination of Buckingham by John Felton, with an account of the assassin, August 23, 1628.

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monstrance by the Commons revived it with augmented fury. I am also disposed to think that some indications of feeling pointing to the duke's death by a private hand as at once probable and just operated powerfully with him. Individually prone to mischief, and invited by such expressions, he, when too late, discovered that, instead of reaping glory he had incurred deserved infamy as well as punishment.* Any scruple which yet remained was removed by the perusal of books which maintained the lawfulness of killing an enemy to the republic. His resolution once formed, he watched his opportunity in silence, without imparting his purpose to a living soul. Owing to the numerous train with which the duke was generally attended, no opportunity to strike the blow occurred for a considerable time. But when he had gone to Portsmouth to hasten the embarkment of the troops, Felton went thither, confidently expecting that, amid the bustle of such an occasion, Buckingham must be exposed. Should he even be disappointed there, he resolved, as a last resource, to accompany the expedition itself as a volunteer, when, he doubted not, an opportunity to effectuate his purpose could not fail.

To prevent observation, Felton did not stir out of doors that night; but next morning he repaired to the duke's lodgings. Buckingham had, in his dressing-room, which was crowded with company, just been engaged in very earnest conversation with Soubieze and other Frenchmen, in consequence of a rumour which had reached them that Rochelle had been relieved. Soubieze and his followers at once perceived that this was a device of the enemy to slacken the English preparations till the mole at the mouth of the harbour was completed; and as the duke either believed, or affected to believe, the report, they were naturally very importunate on a subject on

* See *Letter in Har. MS.* 390 from Mr. Mead to Sir M. Sturville, 29th June, 1628, p. 911.

which depended all their hopes. The English, strangers to the language in which the discourse was conducted, imagined, from the eagerness of the Frenchmen's manners, characterised by the vehement gestures of their country, that the parties had been quarrelling. Soubieze and his followers soon quitted the apartment, and the duke rose shortly afterwards to go to breakfast in an adjoining hall. Arrived there, and assured by the noise of his being at home, Felton lingered about the door till he heard the duke's approach, when, as one of the suite, he pretended to hold up the hangings. Buckingham, as he drew towards the door, where the hangings were held up, stopped to converse with Sir Thomas Frier, a colonel of the army, to whom, Frier being of low stature, he inclined his ear to listen, when Felton, seizing the opportunity to strike over the colonel's arm, plunged a knife into the head of his victim, which he had purchased with a shilling for the occasion. Buckingham exclaimed, 'Villain!' and, drawing out the knife, staggered a few paces, and instantly expired.

No one saw the blow or the person who gave it; but, from what had just been observed, the suspicion lighted upon Soubieze and his attendants. In vain did they protest their innocence: some would have immediately despatched them, had not others more temperate, though they entertained the same idea of their guilt, interposed to save them for public justice. In this moment of distraction, a hat, with a paper sewed in it, was discovered upon the ground, amongst the crowd at the door; and the words in the paper are said to have been—'That man is cowardly base, and deserves neither the name of a gentleman nor soldier, who will not sacrifice his life for the honour of God and safety of his prince and country. Let no man commend me for doing it, but rather discommend themselves; for, if God had not taken away our hearts for our sins, he could not have gone so long unpunished.' It was easy to conclude that the hat

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belonged to the assassin ; but the paper gave no sufficient clue to his person, and it was naturally conjectured that, whoever he were, he was already either far distant or provided with a hat, when a man, bareheaded, was observed to walk very composedly before the door. One cried, ' Here is the fellow that killed the duke ! ' Others eagerly asked, ' Which is he ? ' when the man, who might easily have escaped, with great composure said, ' I am he ; let no person suffer that is innocent.' The most furious rushed upon him with drawn swords, to which he calmly and cheerfully exposed himself, preferring such a death to being reserved for that deliberate justice which he knew must be executed upon him ; but others, less inflamed with passion, defended him from the fury of their companions, that he might be consigned over to the punishment of the law. Nothing could have been more fortunate for the popular party. Had he perished on the spot, a stigma would have been industriously attached to them as the instigators, and good men might have been deterred from heartily co-operating with a party suspected of such an enormity. They, however, who would have rashly killed the assassin, appear to have been actuated solely by the distracted fears of the moment, not by attachment to the individual to whom they had been accustomed to pay the most servile devotion ; for we are told by Sir Philip Warwick, ' that they that, a little before, crowded to be of his remotest followers, so soon forsook his dead corpse, that he was laid upon the hall table, nigh to which he fell, and scarce any of his domestics left to attend him. Thus, upon the withdrawing of the sun, does the shadow depart from the painted dial.' *

The murderer was soon recognised to be the same Felton who had served in the expedition to the Isle of Rhee. Carried to a small sentry-box, he was loaded with the heaviest irons, and so crippled against the wall

* Warwick, p. 35.

that he could neither stand upright, sit, nor yet lie down. In the meantime, many messengers posted with the intelligence to court, which was then at a small distance ; and, on the other hand, the courtiers flocked as fast to Portsmouth. One of these had a commission to enquire into the fact ; and, having been admitted to the prisoner, affected to have come for the purpose of administering comfort with prayer. But Felton at once showed that he was not to be imposed upon ; and, to enquiries regarding his motives, answered, 'I shall be brief—I killed him for the cause of God and my country.' 'Nay,' returned the other, 'there may be hopes of his life ; the surgeons say so.' Felton smiled, and said he knew well enough that he had given a blow which had terminated all their hopes. 'I had the force of forty men,' continued he, 'assisted by Him that guided my hand ; it was Heaven that gave the stroke, and though his whole body had been covered over with armour of proof, he could not have avoided it.' Interrogated by whose instigation he had perpetrated the deed, he replied that they needed not trouble themselves with that enquiry, for that no man living had credit or power with him to dispose him to such an action ; that it proceeded entirely from the impulse of his own conscience, from which he felt perpetual disquiet till he performed it ; and that he never had entrusted his purpose to a human soul. He declared himself assured that the fact was justified, and that he was the redeemer of the people's sufferings from the power of the duke's usurpations ; mentioning that his motives, which were entirely of a public nature, would sufficiently appear if his hat were examined, as that, conceiving it very probable he should perish in the attempt, he had expressed them in a writing he had fixed there. He likewise stated that he had sharpened the point of his knife upon the stone of a cross in his road to Portsmouth, believing it to be in justice more adapted to advance his design than for the idolatrous object for which it had been erected.

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At first this misguided wretch gloried in the act ; but, as the passion which had nerved him to the deed subsided with its gratification, better thoughts returned, and his crime stood unveiled to him in its native deformity. He was soon carried to London and examined before the council, where he was again much urged to confess by whose instigation he had performed the bloody deed, and whether the Puritans had not been engaged in it ; but his answers were uniformly the same as before. Upon this, Laud told him that, if he did not confess, he must go to the rack. The other replied, that, if it must be so, and if what he should then say were to be received for truth, he could not tell whom he might name, perhaps Bishop Laud himself or any of their lordships, in the extremity of torture, for that torture might draw unexpected things from him. The council then, without further question, remanded him to prison. It was afterwards debated whether he could legally be put to the rack, when the king, who was present, desired that, before any resolution was taken, the judges should be consulted regarding the lawfulness of the measure ; for that, *if it might be done by law, he would not use his prerogative in this point*. The question was then propounded to the judges, who, after due consultation, unanimously answered that the prisoner could not lawfully be tortured by the rack, for that no such punishment is known or allowed by our law. Having received this opinion, Charles abstained from using his prerogative ; and Felton had the benefit of an ordinary trial. In the height of his penitence, the criminal offered his right hand to be struck off before execution, and the king intimated his wish that it might be done ; but the judges declared it to be illegal, and he underwent the usual punishment. His body was hung in chains, according to the practice observed in the case of atrocious murders.*

* Ellis's *Original Letters*, vol. iii. p. 254 *et seq.*, p. 278 *et seq.* ; Franklyn, p. 337 ; Rush. vol. i. pp. 638, 640, 641 ; Sanderson, p. 120 *et seq.* ; How-

es happened to be at prayers in his presence, when Sir John Hipposley, entering suddenly, read the news in his ear. He received the intelligence with an unmoved countenance; and, when the duke paused on learning what had occurred, for the duke read rapidly through every corner of the chamber, he commanded him to proceed, and remained him-

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VIII.

Conduct of
Charles in
regard to
the assass-
ination of
Bucking-
ham.

Let. p. 187 et seq.; White-
1; Warwick's *Memorials*,
p. 186; May's *History of the*
; p. 10; Clarendon's *Hist.*
eg. This noble historian
his narrative with a long
t the ghost of Sir George
he duke's father, having
urning of his son's fate no
than three times. Like
general, however, this was
one; for, instead of going
his son (was the spirit
same sycophantish awe
living followers of the
he phantom carried its
an officer of the wardrobe,
life it had paid attention
d, but whose situation was
to warrant his going
with the important intelli-
the favourite. The man
the warning till the third
then he went to a gentle-
man he was well known,
Freeman, one of the
of the requests, who had
lady nearly allied to the
prevailed with him to
a grace to grant the officer
wardrobe an opportunity of
with him privately on a
the utmost consequence
e. The man gave suffi-
mation, which he had got
host, relative to Bucking-
ate affairs, to satisfy the
he was no impostor, and
was observed to be very
afterwards. But to what
arning tended, except to
business at some impending
it is impossible to conceive,
aint was too dark and mys-

terious to enable him to provide
against the danger. The same noble
historian, *in his life*, tells a curious
story about an occurrence to himself,
in regard to this assassination. He
was just reading to his father an ac-
count in Camden, of the apprehension
and confession of John Felton, the
person who, in Elizabeth's time,
affixed the pope's bull to the Bishop
of London's gates, when a neighbour
rapt at the door, and came running
hastily in to announce that a post
had just passed through the village,
on his way to the Earl of Berkshire's
seat, with news of the duke's murder
by John Felton! *Life*, p. 5. Sir
James Balfour, in his *Annals*, states
that one day when the king and his
favourite were playing at bowls in
Spring Gardens, a Scotsman, of the
name of Wilson, indignant at the
duke's presumption in remaining
covered in the royal presence, which
no other ever did, tossed off his hat,
and declared he would punish for-
wardness in the same manner wher-
ever he met with it. But, lo! on a
search being instantly made for this
reprehender of ill manners, he was
not to be found. The courtiers stared
at the incident as ominous of the
favourite's fall; but the infatuated
duke laughed at them for their pains.
Balfour's Annals, MS. Adv. Lib.

Mr. Hume says, that the judges,
when they delivered their opinion
against putting Felton to the rack,
'declared, that though the practice
had formerly been very usual, it was
altogether illegal.' Now there is
not one word to that effect in their
opinion. But thus it ever is with
that author

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self with perfect composure till the end of the service. Hence it was concluded by the courtiers, who studied his looks, that, in his heart, he was not displeased at an event which rid him of a servant so generally odious as to obstruct all his overtures in parliament, and whom he could neither protect nor yet desert with honour ; but the subsequent indulgence to Buckingham's family and relations, his declaration that the favourite was his martyr, and that far from ruling him, as was erroneously supposed, he was the most obedient servant, together with the small favour shown to those who sought to recommend themselves by traducing the late minion's character, led to a belief that his apparent indifference proceeded from self-command.* Yet, while it may be admitted that his attachment to the favourite's memory continued, it is by no means unlikely that the mistaken notion of a personal dislike to Buckingham having been the main cause of such jarring with parliament, might, by the hope of greater submission to his measures, soothe his anguish for the loss. Men's feelings can only be judged of from the expression of them ; and there is assuredly no index to the mind so infallible as the countenance. Nor should it be forgotten that Charles had here no motive for an uncommon exercise of self-command, since, though in whatever regards self it is magnanimous to be composed, there is nothing ungraceful in bewailing the sufferings of others. But Clarendon's account is inconsistent with the idea of self-command. He says, 'that though he received the intelligence with apparently perfect composure, he, after prayers, suddenly withdrew to his chamber, and indulged

* *Ayrc. MSS. Brit. Mus. 4161*, vol. ii.; *Letter* from Mr. J. Mead, 20th Sept. 1628. 'The conduct of Felton occasioned a friend of mine,' says Mead, 'wittily to say, There was never a man murdered with so much gospel' (*Letter*, 20th September, *Har. MSS.*). See more on this point showing how religiously he set about it: 'He had his propo-

sitions in divinity all ready on the point' (*Letter* of 19th Sept. *Id.*). When conducted to London 'an old woman' in Kingston-upon-Thames bestowed this salutation upon him: 'Now, God bless thee, little David,' quoth she, meaning he had killed Goliath (*Letter* of Mead, 20th Sept. *Har. MSS. 390*, and *Ellis Ed.* p. 261.

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in the most immoderate grief, lamenting, with abundance of tears, the loss of so excellent a servant, with the horrid manner in which he had been deprived of him ;' and that 'he continued in this melancholic discomposure of mind many days.'* Now this must have been seen by some one, and communicated to the body of courtiers. Yet the same historian tells us, that persons of all conditions, observing the indifference manifested by the king at prayers, took great licence in speaking of the duke and dissecting his faults, thinking they should not thereby incur his majesty's displeasure! Charles had shown unbecoming partiality for his favourite, and had, in his zeal for that individual, been betrayed into fatal rashness, which it is impossible to reconcile with the imputed cause of his composure at the news of his death. It is possible, however, that his grief might be more unallayed afterwards, when he discovered that the hatred of the duke's person arose chiefly from discontent at public measures of which he was the supposed author; and that, as the same system was still persisted in, the opposition was unabated. When, therefore, courtiers tried to recommend themselves by traducing the duke's memory, they were indecorously told by him that they durst not have talked so if the favourite were alive—language tantamount to a declaration of the unlimited ascendancy of his minion,† and which reminds us of the humiliating confession of the late king to Williams, 'You are a bold man that dare say more than myself.'‡

The king, notwithstanding the duke's death, pursued his design of relieving Rochelle; but with the same success that had distinguished the other military operations of his reign. The fleet destined for the expedition was defective in victuals, tackling, and other materials; but, above all, in skilful commanders. Some efforts were,

Design of relieving Rochelle pursued; but unsuccessfully, and the town surrendered.

* *Letter* of Mead, 20th Sept. as 4161. Mr. J. Mead's *Let.* 20th Sept. just referred to (see also Warwick, 1628; Ellis's *Original Let. Id.* p. 261. Howell, &c.).

† *Aysc. MSS.* Brit. Mus. No. 4161. Hacket's *Life of Williams*, part i. p. 207.

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indeed, made to force the barricado, now nearly completed, at the mouth of the harbour ; but, while the British commanders spent two whole days in uselessly cannonading the works at a distance, they refused to support Soubieze in a vigorous attempt upon the mole, which he proposed to make with his own ships ; and rejected another proposal, by Count Laval, to try to blow it up. In the meantime, the Rochellers were reduced to the last extremity : of fifteen thousand shut up in this devoted town, eleven thousand had already perished, chiefly with famine ; and the survivors had consumed almost everything that could prolong existence. In hopes of relief from England, those gallant but ill-fated men had fed on horse-flesh, hides, leather, dogs, and cats ; and when even these means began to fail, they dropped so fast, that the dying, far from experiencing the kind attentions of friends in their last moments, had not the prospect of decent interment. They usually carried their own coffins into the church-yards, and creeping into them, patiently awaited their dissolution ; but great numbers lay altogether unburied, a prey to ravens and vermin. The survivors at last, in utter despair of relief, entered into a capitulation. Their noble conduct would have excited the admiration of a generous enemy, while such a spectacle of human misery was not surveyed even by Richelieu without some marks of pity. Yet the terms, hard in themselves, were not observed ; great outrages were committed by the conquerors ; and the Cardinal himself marked his triumph by a direct breach of faith. Had he been sensible to the just reproaches of the fallen, the indignant, high-spirited reply of Guiton, the mayor, must have stung him with shame and remorse for his pitiful baseness : ‘ Had I known that you would not have kept your word with me, the burgesses should have defended themselves to the last man, and I should have then buried myself under the ruins of the town.’ *

* Rush. vol. i. pp. 635, 636; Franklyn, p. 338; Howell's *Fam. Let.* p. 188; Sanderson, p. 126; Larrey, tom. iii. p. 67 *et seq.* and p. 80. *Ido*

ough Rochelle, the bulwark of the Protestant cause
 ence, was thus subdued, such was the persecution of
 reformed churches in that country, that they again
 red aid from England, protesting 'that what they
 was with their tears and their blood.' But Charles
 had originally so far contributed to their ruin by
 g ships, an act which he solemnly denied to his own
 ts; who had drawn them into this war; and who
 both bound himself by a special article of the treaty
 the Rochellers not to conclude a peace without
 s stipulations for the maintenance of their immu-
 and privileges, and had assured them, by letters
 his own hand, that he would never desert them—
 ow, and had actually been for some time past, pre-
 , by a separate treaty, to desert this unhappy class
 i in the midst of their calamities.*

liament was to have reassembled on the 20th of
 ar, but was farther prorogued till the 20th of
 y. As the time approached, his majesty consulted
 select committee of privy councillors, regarding
 t was likely parliament would insist upon, and how
 f the privy councillors who were members of either
 should comport themselves, when certain resolutions
 ntered into: That in the event of its being moved
 lower house, 'with any strength,' that the merchant's
 should be restored before the bill of tonnage and
 age was entered upon, the privy councillors should

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Resolu-
 tions taken
 by the king
 and cer-
 tain coun-
 cillors in
 regard to
 the par-
 liament.

the feelings which could
 such cold-blooded remarks as
 he indulges in upon the fall
 own; and I must say that
 ice of Charles for lending
 —'that all princes sacrifice
 us of state the interests of
 gion in foreign parts'—and
 k upon the English as a
 bigots for indulging oppo-
 nents, would, in my opinion,
 very just, not to say gene-
 timent in the human breast.
 y that actuated Charles was
 upporting the rights of kings

against their subjects; and, as has
 already been proved, the people
 naturally opposed it even on the
 ground of preserving their own pri-
 vileges.

* *Mem. du Duc de Rohan*, liv. iv.
 Du Chesne edit. 1668, sec. partie,
 p. 222 *et seq.*; Guthrie, vol. iii. p.
 887; Howell's *Fam. Let.* p. 188;
Hist. Pref. to Sir D. Carleton's Letters,
 p. 31; Larrey, tome iii. p. 67 *et seq.*;
 Rush. vol. i. p. 636, vol. ii. p. 4 *et*
seq.; Ellis's *Col.* vol. iii. p. 267 *et*
seq.

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answer, that if the Commons would grant the duties on the same terms as they had been given to his predecessors, it would end all disputes: That if this answer did not produce the intended effect, the king should himself address them, and declare that though his predecessors claimed 'it not by act of parliament, yet they took it *de facto* until it was granted; and that his majesty had done the like: *That if they will pass the bill to his majesty, as his predecessors had it, he will do any reasonable thing to declare that he claims not tonnage and poundage otherwise than by grant of parliament. But that, if this do not satisfy, then to avow a breach, upon just cause given, not sought by the king.*' It was farther observed on this subject, that the bill should be prepared before the meeting of parliament, in the same form as it had been passed to King James, with words giving it from the beginning of the reign: That it should then be presented at the first sitting, and the privy councillors be ready to declare that his majesty had ordered it, for the purpose of preventing all questions and debates; and that they ought to persuade them to despatch the measure, and declare that the Commons must return a speedy answer whether they will pass it or not.

The council also took into consideration other matters which they imagined parliament would insist upon,—such as accusing ministers; discussing questions relating to religion which were fit only for his majesty and a convocation to determine; raising objections to the king's speech on the last day of the former session, as disclosing principles which trenched upon the liberty of the subject:—and it was resolved upon, that in the event of the Commons entering upon any of these topics, the privy councillors should, at once, intimate that such proceedings could not be allowed, and if persisted in would occasion a breach; and that his majesty should himself declare to them that he would not suffer them to indulge in such irregular courses.*

* Rush. vol. i. pp. 641-2.

When parliament assembled, the first enquiry of the Commons regarded the enrolment of the petition of right, and they discovered that the king's speech at the close of the last session had been enrolled along with it, doubtless to show that the statute was not to be construed upon its own merits, but according to the meaning afterwards put upon it by the sovereign himself, whose arbitrary measures it was intended in future to protect the subject against. Norton, the king's printer, was called to the bar, and questioned relative to the additions made to the copies of the petition of right, which had been published, when he informed the house (subsequent investigation confirmed his testimony) that he had acted by a warrant from the king himself.

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Parliament
meets,
January
20, 1629.

Their next enquiry regarded the infringement of the public rights during the prorogation, in spite of the petition of right; as the arbitrary and cruel punishment of Savage in the Star Chamber, and the measures adopted to enforce payment of duties which had not yet been granted by parliament. Some individuals had been committed for refusing, and a command by the barons of Exchequer sent to the sheriff of London not to execute a replevin for the purpose of recovering goods illegally taken. The grievance was particularly instanced in the case of Mr. Rolls, a member of parliament, whose goods were taken to the value of 5000*l.*, in satisfaction of an illegal demand by the government of 200*l.*, which he resisted. When he argued his privileges, he was answered by the officers of the customs, 'if all the parliament were in you, we would take your goods.'*

Infringe-
ment of
the peti-
tion of
right con-
sidered.

The last case, that of Mr. Rolls, was referred to a committee, and the officers of the customs were summoned to the bar of the house for the proceeding; but the debate was interrupted by a message from the king to attend him at the Banqueting House along with the Lords.†

* *Old Parl. Hist.* vol. viii. p. 245 et seq.; Cobbett's *Parl. Hist.* vol. ii. p. 430 et seq.; Rush. vol. i. p. 643.

† *Old Parl. Hist.* vol. viii. p. 254 et seq.; Cobbett's *Parl. Hist.* vol. ii. p. 442; Rush. vol. i. pp. 643-4.

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In his address to both houses, Charles declared his motive for summoning them into his presence to be a desire to remove every obstacle to a good understanding, particularly in respect to a complaint made in the lower house; and, after paying a compliment to the Lords, he proceeds thus:—‘The complaint I speak of is for staying men’s goods that denied tonnage and poundage: This may have an easy and short conclusion, if my words and actions be rightly understood; for, by passing the bill as my ancestors have had it, my by-past actions and my future proceedings will be authorised, which, certainly, would not have been stuck on, if men had not imagined that I had taken these duties as appertaining to my hereditary prerogative, in which they are much deceived; for it ever was and still is my meaning, by the gift of my people to enjoy it; and my intention in my speech at the ending of the last session concerning this point was not to challenge tonnage and poundage as of right, but *de bene esse*, showing you the necessity, not the right by which I was to take it, until you had granted it to me, assuring myself, according to your general professions, you wanted time, not will, to give it me.’ He therefore hoped they would instantly pass the bill, and thus end all dispute, ‘since he had removed the only obstacle that might trouble them.’ He concluded with an indirect reprehension of their late enquiries.*

This attempt at conciliation was, surely, ill-calculated to effect its object. What credit could be reposed in the professions of a prince who, though he had denied, in the most unqualified terms, the power of parliament to interfere with this branch of revenue, and had caused the speech which he made at the close of the former session to be enrolled along with the petition of right, in order to show that he had not departed from his pretension to those duties as inherently attached to the crown, yet now

* *Journals of the Lords*, 26th January, 1628; *Old Parl. Hist.* vol. viii. p. 256 *et seq.*; Cobbett, vol. ii. p. 442; Rush. vol. i. p. 644.

solemnly declares that it never had been his intention to draw them but as a gift of his people? And what must have been his opinion of the understanding of parliament, when he unhesitatingly used language to this purpose? 'The duties belong to me by virtue of my office: the formality of granting them I allow to you: but, in the meantime, I draw them as attached to my prerogative, and as this occasions disputes with my subjects, you must not longer delay to discharge your illusory privilege—else the mockery will be withdrawn.'

The Commons were not disposed to pass a bill upon this subject immediately. The principles on which it was asked involved a denial, which must first be abandoned, of their right to give; and in the present state of affairs it was necessary to make some farther provision for civil and religious liberty, before they voluntarily removed the cause of their being continued together. We have already had occasion to show that religion was made an instrument for disseminating principles destructive of the fundamental laws of the realm; and that, as the innovations introduced were as obnoxious to the religious sentiments of the people, as the real object of them was hostile to their civil rights, it would have become men altogether indifferent to the first, yet zealously attached to the last, to raise their voice against insidious novelties. In that age, however, all men were inspired with reverence for religion, and, however their honest feelings may be derided, most will conscientiously respect them. It is easy to sneer at a popular assembly for entertaining topics of discussion about free-will and necessity—the Arminian tenets—points which philosophers have not been able to determine; but the remark, how deep soever apparently, is not founded upon a comprehensive view of things. Even in a religious view alone, parliament, unless composed entirely of sceptics, could not be indifferent to such matters; and as the sovereign had, by encouraging, obtruded the Arminian opinions upon the people, so it

Religion.

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belonged to the legislature to watch over the purity of the established church, and check the arbitrary encroachments of ecclesiastics. Their views appear, from the debates, to have been much founded on the political consequences, and indeed are well expressed by Mr. Rouse in the following language. Having attacked Arminianism as the spawn of Popery, he proceeds thus: ‘If you mark it well, you shall see an Arminian reaching out his hand to a Papist, a Papist to a Jesuit, a Jesuit gives one hand to the Pope and another to the King of Spain, —and these men having kindled a fire in our neighbour country, have now brought over some of it hither to set on flame this kingdom also. *Yea, let us farther search and consider, whether these be not the men that break in upon the goods and liberties of this commonwealth, for by this means they make way for the taking away of our religion.* It was an old trick of the devil; when he meant to take away Job’s religion, he began at his goods, saying, lay thy hand on all he hath, and he will curse thee to thy face. Either they think thereby to set a distaste between prince and people, or else to find some other way of supply, to avoid or break parliaments, that so they may break in upon our religion and bring in their errors. But let us do as Job did, who, being constant against temptation, held fast his religion, and his goods were restored to him with advantage; so if we hold fast God and our religion these things shall be added unto us. Let us consider the times past, how this nation flourished in honour and abundance, when religion flourished amongst us; but as religion decayed, so the honour and strength of this nation decayed also. When the soul of a commonwealth is dead, the body cannot overlive it. If a man meet a dog alone, the dog is fearful, though never so fierce by nature; but if that dog have his master by him, he will set upon that man, from whom he fled before. This shows that lower natures, being backed with the higher, increase in courage and strength; and certainly man being backed

with omnipotency, is a kind of omnipotent creature. All things are possible to him that believeth; and where all things are possible, there is a kind of omnipotence. Wherefore let us now, by the unanimous consent and resolution of us all, make a vow and covenant henceforth to hold fast our God and our religion; and then may we certainly expect prosperity on this nation.*

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It is a singular fact, that the high-church party should now arrogate the very power which had been so greatly objected to in the Presbyterians—that of being independent of the civil authority, and that they should have been keenly supported in their pretensions by the king himself, whose preposterous interference with religion was one of the main causes of his ruin. But he acted upon the principle attributed by Hacket to the king of Spain, who ‘would,’ says he, ‘make the pope too big for a priest, that the pope might make him too great for a king.’† He that nominated the bishops could rule them, and in this way a door was opened for any innovation, as the church, settled by divine authority, must have the power of making canons, regulating the external worship, &c.; and the people, it was anticipated, once subdued by superstition, would listen to the doctrine not of passive obedience only, but of active also. ‘There never was,’ said Sir Walter Earl, ‘in point of subsistence, a more near conjunction between matter of religion and matter of state, in any kingdom in the world, than there is in this kingdom at this day.’‡ We have already alluded to the works of Montague, and may observe here, that Cosens, in his Horaries, reduced observances approximating to the popish to a regular form, and maintained the seven sacraments, &c. &c.; while Prynne, for answering the production, was summoned into the Star Chamber, and only escaped punishment at this time from the dread

Innova-
tions in
religion.

* *Old Parl. Hist.* vol. viii. p. 258 *et seq.*; *Rush.* vol. i. p. 645.

† Hacket's *Life of Williams*, part i. p. 128.

‡ *Old Parl. Hist.* vol. viii. p. 268; *Cobbett's Parl. Hist.* vol. ii. p. 450.

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VIII

entertained by Laud of the parliament. Vengeance, however, was merely suspended. The circumstance was remembered, and terribly visited upon him in another form.* The communion-table was converted into an altar, in imitation of the high altar, adorned with candlesticks, &c., and people were enjoined also to make obeisance to it by bowing, to stand up at *Gloria Patri*, &c. ; pictures, lights, and images were set up in churches, crossing introduced on every occasion, as also praying towards the east ; women were ordered not to be churched without a veil : in short, new pomp and ceremony were daily introduced. The Romish party, too, were treated with increased indulgence ; and a favourite bishop even told one of his diocesan clergy, ' that he must not preach against Papists now as he had formerly done.' †

These and other innovations, with the usurped powers, taken along with the rigour shown to all who declined to conform to them, occasioned many warm speeches in the lower house. Mr. Kirton charged them to the ambition of some clergy near his majesty, and observed, ' that the highest dignity that they could attain in England was an archbishopric, but that a cardinal's hat was not there to be had.' ‡ In the course of the debates, the pardons of Jesuits, and of Manwaring, Sibthorpe, Cosens in particular, the denial of the supremacy, the innovations in regard to the altar and doctrinal matters, the power arrogated of

* Heylin's *Life of Laud*, pp. 173-4, 230.

† *Old Parl. Hist.* vol. viii. p. 283.

‡ 'They' (the Commons), says Mr. Mead, in one of his letters, ' were very hot against Cosens, and no matter if they trounce him ; he is a most audacious fellow, and I doubt scarce a sound Protestant, and takes upon him most impudently to bring superstitious innovations into our church, as, for example, Dr. Ward showed me a letter the other day from Durham, wherein were these words : Mr. Cosens was so blind at

even-song on Candlemas, that he could not see to read prayers in the Minster with less than 340 candles, whereof 60 he caused to be placed about the high altar. Besides, he caused the picture of our Saviour, supported by two angels, to be set in the quire upon Bish. Hatfield's tomb.' *Ayc. MSS.* Brit. Mus. No. 4161, vol. ii. March 20th, 1628-9 (see original). There were three editions of his Horaries, to suit different capacities. *Ib.* *Old Parl. Hist.* vol. viii. pp. 288-9, 294, 319 *et seq.* ; Cobbett's *Old Parl. Hist.* vol. ii. p. 419 *et seq.*

altering canons, and of innovating in other respects, were all warmly exposed. On the last point, it was remarked that, under the exercise of such a power, the Romish or any other superstition might be introduced. That it belonged to parliament, the fountain of all law, to protect religion; that it had ever enjoyed the right; and that it was inconceivable how any other authority in the state could; for that as the Archbishop of Canterbury's jurisdiction extended only over his own province, the principles established there might be opposite to those established in the province of York; and that it was absurd to talk of the high commission, since it had unquestionably derived all its power from parliament. On the subject of the pardons to Manwaring and others, which was referred to a committee, Oliver Cromwell appeared as a speaker; and as he afterwards performed so memorable a part, we shall give the reported substance of his speech: 'That he had heard by relation from one Dr. Beard, that Dr. Alabaster had preached flat popery at St. Paul's Cross; and the Bishop of Winchester, Dr. Neill, commanded him, as he was his diocesan, he should preach nothing to the contrary. That Manwaring, so justly censured for his sermons in this house, was by this bishop's means preferred to a rich living. If these be the steps to church-preference, what are we to expect?'

These proceedings in the lower house were extremely disagreeable to the king and his advisers, amongst whom Laud was now ranked the chief; and, according to the resolution formed before the commencement of the session, Charles, to put a period to these discussions, attempted, by repeated messages, to hasten the bill of tonnage and poundage, under the pretence of terminating disputes with his subjects. The messages, however, did not induce

* *Old Parl. Hist.* vol. viii. p. 289; Cobbett's do. vol. ii. p. 464; Rush. vol. i. p. 655. Dr. Beard had been Cromwell's preceptor. Mr. Hume has taken advantage of the word

'flat' to turn this into ridicule. But the word was, as every one acquainted with the style of the period knows, a very common one in that acceptance.

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the Commons to abandon the only course which promised the smallest probability of public security to the established religion; and in addition to their vow to maintain it, they petitioned the throne for a fast, in consequence of the distressed state of the Protestant churches abroad. He replied, that fighting would do more good for their Protestant friends abroad than fasting; yet that he would grant their request, though he hoped such demands would not be too frequently made.*

Though Charles at last admitted that he had no right to tonnage and poundage, except as a parliamentary grant, he continued to draw them as inseparably annexed to his office; and the Commons resolved to vindicate the public privileges on this point, well observing, that if the duty were the king's by right, it was not theirs to grant. The customers were, therefore, summoned before the house; but the king intimated that they had acted by his orders. The barons of Exchequer were likewise summoned by them to the bar; when, with unblushing assurance, they declared that law had not been denied; for that replevin, the course adopted, was not the legal one with the king. But they prudently refrained from discovering what they apprehended to be the proper course; and their conduct excited great indignation.†

Eliot's
speech
against
Weston;
conduct
of the
speaker;
last ad-
journalment,
&c. March
2, 1629.

As everything tended to a breach, so the temper of the Commons became more inflamed. The king, perceiving this, commanded them to adjourn. The command was not obeyed; and Sir John Eliot, roused by it, inveighed bitterly not only against the late innovations, and the bishops who favoured them, but against the lord treasurer, Weston, 'in whose person,' said he, 'all evil is contracted, both for the innovation of our religion' (he was then a suspected papist, and died an avowed one), 'and invasion

* *Journals of the Lords*, Jan. 29th;
Old Parl. Hist. vol. viii. pp. 264-6;
Cobbett, vol. ii. p. 447; *Rush.* vol. i.
pp. 650-1; *Franklyn*, p. 343.

† *Rush.* vol. i. p. 654; *Old Parl.
Hist.* vol. viii. p. 301; Cobbett, vol.
ii. p. 472 *et seq.*; *Franklyn*, p. 345.

of our liberties, he being the great enemy of the commonwealth. I have traced him in all his actions, and I find him building on those grounds laid by his master, the great duke. He is secretly moving for this interruption, and through fear they break parliaments, lest parliaments break them. I find him the head of all that party, the Papists; and all the Jesuits and priests derive from him their shelter and protection. I protest, as I am a gentleman, if my fortune be ever again to meet in this honourable assembly, where I now leave, I will begin.'—Upon this the speaker delivered a message from the king to adjourn for a fortnight; but it was disregarded, and Eliot proposed a remonstrance against taking tonnage and poundage, when he remarked that the great instruments in that business were moved at the lord treasurer's command; that, out of selfish motives, he dismayed the merchants, and invited strangers to come in and drive out our own trade. The remonstrance, however, both the speaker and clerk positively refused to read; and Eliot did it himself. Yet another interruption arose from the speaker, who refused to put the vote, declaring that he was commanded not to do it by the king; and, notwithstanding a spirited rebuke from Selden, he left the chair. But Hollis, Valentine, and others, in spite of the efforts of the courtiers, drew him back to his seat and held him there. He then declared that he durst not discharge the duty required of him, and shed abundance of tears. This called forth a still severer rebuke from Selden; and Mr. Peter Hayman, his relation, told him 'he was sorry he was his kinsman, for that he was the disgrace of his country, and a blot of a noble family; that all the inconveniences that should follow, yea, their destruction, should be derived to posterity as the issue of his baseness, by whom he should be remembered with scorn and disdain; and that he, for his part, since he would not do his duty, thought he should be called to the bar, and a new speaker chosen.'—As, however, neither advice, rebuke, nor threats overcame the

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speaker's resolution, Hollis read certain articles as the protestation of the house; that whoever introduced innovations in religion should be reputed a capital enemy to the commonwealth; that whoever advised taking of tonnage and poundage, which were not yet granted by parliament, should be reputed the same; and that all who submitted to the impositions should likewise be held as betrayers of, and enemies to, the liberties of England. These articles were passed by acclamation; but, in the meantime, the king, understanding that the Commons declined to adjourn at his command, sent the serjeant to lift the mace from the table. He was, however, detained; the door being locked, and the key committed to the custody of a member. Upon this, Charles despatched the usher of the black rod to dissolve them; but the usher could not get admission, and reported to his majesty that the door was locked; the other in a fury sent for the captain of the pensioners and the guard to force the door,—when the Commons, having completed their protestation, voluntarily adjourned till the 10th of March, and thus prevented the mischief.*

Hollis,
Eliot, &c.
committed,
&c.

Immediately after this, Hollis, Eliot, Selden, Hobart, Valentine, Curriton, and others, were summoned before the council; and Hollis, Eliot, Valentine, and Curriton appeared, but having refused to answer out of parliament for what they had said or done there, they were committed close prisoners to the Tower. A proclamation was issued for the apprehension of the others, and the studies of some of them were sealed up. Sir Robert Cotton had lately, as we have related, been consulted upon the critical posture of public affairs; but this did not save him from the evil with which he had previously been threatened—the loss of his invaluable papers, because he was charged with imparting ancient precedents to the lower house; and

* Rush. vol. i. p. 650 *et seq.*; *Old Parl. Hist.* vol. viii. p. 320 *et seq.*; Cobbett, vol. ii. p. 487 *et seq.*; Franklyn, p. 346; Rush. *Id.* p. 661 *et seq.*; Franklyn, p. 347.

the event is said to have so affected his spirits as to hasten his death.*

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VIII.

On the 10th of March, his majesty, in person, dissolved the parliament. He addressed the Lords courteously, and attributed the dissolution to the seditious carriage of some vipers in the lower house. But he afterwards published his reasons for this important measure, and since the petition of right has been pronounced so important an accession to English liberty, it may not be improper to observe that Charles now, as he had done at the prorogation, declared that he never imagined that, in granting it, he had renounced any right that had descended to him; and that he desired the people not to misinterpret or pervert that statute; for that, while he would maintain his subjects in their just liberties, he expected as much submission and duty to his authority and commands as had been yielded to the greatest of his predecessors.†

Parliament dissolved,
March 10,
1629.

Great was the public discontent at the dissolution; and it testified itself even in libels cast abroad against the king's most inward counsellors. One against Laud was to this effect: 'Laud, look to thyself; be assured thy life is sought; as thou art the fountain of wickedness, repent of thy monstrous sins before thou art taken out of the world, and assure thyself neither God nor the world can endure such a vile whisperer to live.' There was one equally bad, too, against the lord treasurer Weston.‡

The king determined to proceed against the imprisoned members in the Star Chamber, and certain queries were privately propounded to the judges, rather to ascertain how far they could be depended on in supporting the prerogative, than for the purpose of acquiring legal information. One of them, though he did not cease to hold his office on such terms, often highly complained of thus

Proceedings
against
Hollis and
the rest.

* Cotton died 6th May, 1631. *Biog. Brit.* Cotton, *Ays. MSS.* Brit. Mus. No. 4161, vol. ii. No. 53; Let. 12th May.

† *Journals of the Lords*; Rush.

vol. i. p. 600 *et seq.*; Franklyn, p. 347; *Old Parl. Hist.* vol. iii. p. 333 *et seq.*; Cobbett's *Parl. Hist.* vol. ii. p. 491 *et seq.*

‡ Rush. *Ib.* p. 602.

CHAP.
VIII

sending privately to the judges for their opinions beforehand, predicting, 'that if Bishop Laud went on in his way, he would kindle a flame in the nation.'*

The imprisoned members now took out writs of *habeas corpus* in the King's Bench, and the case was argued as to its being bailable; but, when the court were ready to deliver their opinion, Charles prevented the appearance of the prisoners by sending them to different prisons. For this extraordinary proceeding, he, in a letter to the judges, alleged that the prisoners had conducted themselves insolently at the bar. At first, an exception from this gross injustice was intended in favour of Selden and Valentine; but another letter, withdrawing the indulgence, succeeded the former in three hours. In this stage of the business it was intimated to those gentlemen, that if they would petition the throne for their liberty, and express contrition for having offended the king, they should be instantly restored to their liberty, and the proceedings against them be dropped. But as this necessarily imported a recognition as legal of that arbitrary course which they opposed, and would have branded their parliamentary proceedings as seditious—equally betraying the public liberties, and degrading themselves, they declined to purchase immunity from oppression on such terms. Their obstinacy, as it was called, still farther inflamed the king. In the meantime, after they had lain thirty weeks in confinement, they again moved to be bailed, and the reasonableness of the demand was admitted; but a condition was tacked to the judgment which deprived them of its benefit. The only question before the court was, bailable or not? Yet the judges insisted upon sureties to a large amount for their future good behaviour. So unjust a demand was properly resisted; the prisoners maintaining that it implied an admission of culpability in the matters objected to them, and was injurious to the parliament. That they demanded

* Whitelocke, p. 13.

to be bailed, not as an indulgence, but as a right; and that, in the whole argument upon this point, there never had been a hint given of such a condition. The judges attempted to intimidate them, but they continued firm; and one of their number, Mr. Long, who had already found sureties to the extent of 2000*l.*, in the chief-justice's chambers, for good behaviour, now retracted the concession, declaring 'good behaviour to be a ticklish point.' Indeed, under such circumstances, it was impossible to determine what might be construed into a breach of it.

The cases were now withdrawn from the Star Chamber, and informations exhibited against the prisoners in the King's Bench, questionless from the idea that it would be most convenient to accomplish an arbitrary measure in an ordinary court. The prisoners still argued that they were not responsible to that court for their parliamentary conduct; but their plea was overruled, and the following sentence, though they still demurred to the jurisdiction, pronounced:—I. That every one of the defendants should be imprisoned during the king's pleasure—Sir John Eliot in the Tower, the rest in other prisons. II. That none of them should be liberated without having given sureties for future good behaviour, and made a submission and acknowledgment of his offence. III. That Sir John Eliot, as the greatest offender and the ringleader, should be fined 2000*l.*, Mr. Hollis 1000 merks, and Mr. Valentine, as the least wealthy, 500*l.**

Sir John Eliot, whose eloquence and talent were universally admitted, died in jail, thus falling a sacrifice to his patriotism—a death far more honourable to his integrity than any suffering on the scaffold or in the field. A man of ordinary firmness may summon up resolution to meet a sudden catastrophe, but it requires a mind of the first order to maintain one's spirit in the seclusion of

* Rush. vol. i. pp. 662—670, 679 *et seq.*, 683 *et seq.*; Franklyn, p. 348 *et seq.*; Whitelocke, pp. 13, 14.

CHAP. VIII. , a prison, unwearied by long confinement, unsubdued by the slow approach of mortal disease. The character of such an individual could not escape the libellous attacks of the court party, whose own vindication required the defaming of a man they had so unjustifiably ruined; but the charges in which they have indulged do not rest on satisfactory evidence. A censure, however, by one attached to the principles for which he contended, deserves more attention: that he mistook the real posture of affairs, and acted unseasonably, bringing mischief to himself without benefit to the commonwealth;* and it must be confessed that there is no folly greater than that of needlessly provoking oppression when the power cannot be resisted; no criminality deeper than that of encouraging the people to resist an arbitrary government without the fairest prospect of success. Whoever does this is, in the language of Ludlow, responsible for all the blood that is shed. In defence of Eliot, however, it may well be alleged, that though the event did not, for some years, seem to justify his hope of an immediate powerful opposition to the present illegal courses, he had great cause to expect that the crown would have found it necessary to summon another parliament within a short period, when his virtuous struggle would have been rewarded by fresh provisions for public freedom.

These proceedings struck so directly at every vital principle of the constitution, as well as at every provision for personal security, and were so hostile to the petition of right, that it was to have been imagined there could only be one opinion upon the subject. Yet Mr. Hume questions whether they deserve the name of severity, while he sneers at the patriotic sufferings of Eliot and the rest, because they might have purchased immunity from

* May's *Hist. of the Parliament*, p. 14. He petitioned often for his liberty, on account of his health, and his physician gave testimony in

regard to the necessity of his being released to preserve his life; but no relaxation was granted. *Ib.*

oppression by submission. Upon the same principle, any arbitrary institution or measures might be justified, since the utmost that an arbitrary government promises itself, by severity or cruelty, is unqualified obedience. They who never dispute commands are always exempt from punishment. But it cannot be denied that matters were arrived at such a crisis, that any future exercise of parliamentary right was incompatible with those measures, and, from the after-proceedings of the government, it may justly be concluded that, had these gentlemen made the concessions demanded of them, the next attempt at opposition would have been visited with a very different chastisement.*

CHAP.
VIII.

* Charles sent for, and personally consulted, the Chief Justice and Justice Whitelocke upon this very case, and, says Rushworth, 'seemed well contented with what they answered, though it was not to his

mind, which was, *that the offences were not capital*, and that by law the prisoners ought to be bailed, *giving security for good behaviour.*' Vol. i. p. 682.



NOTES
TO
THE FIRST VOLUME.

NOTE A.

*The following are Quotations from Fortescue's Work entitled
De Laudibus Legum Angliæ, with the Translations for the
benefit of the English reader.*

CAP. IX.

SECUNDUM verò, *Princeps*, quod tu formidas, consimili nec majori operâ elidetur. Dubitas nempe, an Anglorum Legum, vel Civilium Studia Te conferas, dum Civiles supra humanas cunctas Leges alias, Fama per Orbem extollat gloriosa. Non te conturbet, *Fili Regis*, hæc Mentis Evagatio: Nam non potest *Rex Angliæ* ad Libitum suum Leges mutare Regni sui, Principatu namque nedum Regali, sed et Politico, ipse suo Populo dominatur. Si regali tantum ipse præesset eis, Leges Regni sui mutare ille posset, *Tallagia* quoque et cætera Onera eis imponere ipsis inconsultis, quale Dominium, denotant Leges Civiles, cum dicant, '*Quod Principi placuit Legis habet vigorem.*' Sed longè aliter potest Rex politicè imperans Genti suæ, quia nec Leges ipse sine Subditorum Assensu mutare poterit, nec Subjectum Populum renitentem onerare Impositionibus peregrinis, quare Populus ejus liberè fruatur Bonis suis, Legibus quas cupit Regulatus, nec per Regem suum, aut quemvis alium depilatur; consimiliter tamen plaudit Populus, sub Rege Regaliter tantum principante, dummodo ipse in Tyrannidem non labatur. De quali Rege dicit Philosophus III. Politicorum, '*Quod melius est Civitatem regi Viro optimo, quàm Lege optimâ.*' Sed quia non semper contingit Præsidentem Populo hujusmodi esse virum, *Sanctus Thomas* in Libro quem Regi Cypri scripsit, *de Regimine Principum*, optare censetur, Regnum sic institui, ut Rex non liberè valeat Populum Tyrannide gubernare, quod solum fit, dum potestas Regia Lege Politicâ cohibetur: Gaude igitur, *Princeps optime*, talem esse Legem Regni in quo Tu successurus es, quia et Tibi, et Populo, ipsa Securitatem præstabit non minimam et solamen. Tali Lege, ut dicit idem *Sanctus*, regulatum fuisset totum Genus humanum, si in Paradiso Dei Mandatum non præterisset: tali etiam Lege regebatur Synagoga, dum sub solo

Deo Rege, qui eam in Regnum peculiare adoptabat, illa militabat: sed demum ejus Petitione, Rege Homine sibi constituto, sub Lege tantum Regali ipsa deinceps humiliata est. Sub quâ tamen dum optimi Reges sibi præfuerunt, ipsa plausit, et dum Discoli ei præsessebant, ipsa inconsolabiliter lugebat, ut Regum Liber hæc distinctius manifestavit. Tamen quia de Materiâ istâ in Opusculo, quod Tui contemplatione de *Naturâ Legis Naturæ* exaravi, sufficienter puto me disceptasse, plus inde loqui jam desisto.

TRANSLATION.

The next thing, my Prince, at which you seem to hesitate, shall, with the same ease, be removed and answered; that is, whether you ought to apply yourself to the study of the *laws of England*, or to that of the *civil laws*; for that the opinion is with them everywhere in preference to all other human laws. Let not this difficulty, Sir, give you any concern. A king of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature of his government is not only *regal* but *political*. Had it been merely regal, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose *Tallages* and other hardships upon the people whether they would or no, without their consent; which sort of government the civil laws point out, when they declare, *Quod Principi placuit legis habet vigorem*: But it is much otherwise with a king whose government is *political*, because he can neither make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them against their wills with *strange impositions*, so that a people governed by such laws as are made by their own consent and approbation, enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other: The same things may be effected under an *absolute prince*, provided he do not degenerate into the *tyrant*. Of such a prince, Aristotle, in the 3rd of his *Politics*, says, 'It is better for a city to be governed by a good man, than by good laws.' But because it does not always happen that the person presiding over a people is so qualified, St. Thomas, in the book which he writ to the King of Cyprus (*De Regimine Principum*), wishes that a kingdom could be so instituted, as that the king might not be at liberty to tyrannize over his people, which only comes to pass in the present case, that is, when the sovereign power is restrained by political laws. Rejoice, therefore, my good prince, that such is the law of that kingdom which you are to inherit, because it will afford both to yourself and subjects the greatest security and satisfaction. With such a law, saith the same St. Thomas, all mankind would have been governed, if in Paradise they had not transgressed the command of God. With the same was the whole nation of the Jews governed under the *Theocracy*, when God was their king, who adopted them for his peculiar people; till at length, upon their own request, having obtained another sort of king, they soon found reason to repent them of their foolish and rash choice, and were sufficiently humbled under a *despotic government*. But when they had good kings, as some there were, the people prospered,

and lived at ease; but when they were otherwise, their condition was both wretched and without redress. Of this you may see a particular account in the Book of the Kings. This subject being sufficiently discussed in a small piece I formerly drew up on purpose for your use, concerning the Law of Nature: so I shall forbear at present to enlarge.

CAP. XVIII.

Statuta tunc Anglorum bona sint necne, solùm restat explorandum. Non enim emanant illa a principis solùm voluntate, ut leges in Regnis quæ tantùm Regaliter gubernantur, ubi quandoque Statuta ita Constituentis procurant commodum singulare, quod in ejus subditorum ipsa redundant Dispendium et Jacturam: Quandoque etiam Inadvertentia Principum hujusmodi, et sibi consulentium inertia, ipsa tam inconsultè eduntur, quod corruptelarum nomina, potius quàm legum, illa merentur. Sed non sic Angliæ statuta oriri possunt, dum *nedum Principis voluntate, sed et totius regni assensu*, ipsa conduntur, quò populi Læsuram illa efficere nequeunt, vel non eorum commodum procurare. Prudentiâ etiam et sapientiâ necessariò ipsa esse referta putandum est, dum non unius, aut centum solùm consultorum virorum prudentiâ, sed plusquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipsa edita sunt, ut ii, qui Parliamento Angliæ Formam, Convocationis quoque ejus ordinem et modum noverunt, hæc distinctius referre nôrunt. Et si statuta hæc tantâ solemnitate et prudentiâ edita, efficacîæ tantæ, quantæ conditorum cupiebat intentio, non esse contingant, concitò reformari ipsa possunt: et non sine communitatis et procerum Regni illius assensu, quali ipsa primitus emanarunt. Patent igitur jam tibi, Princeps, legum Anglorum species omnes. Earum quoque qualitates, ut si bonæ ipsæ sint, metiri tu poteris prudentiâ tuâ, comparatione etiam aliarum legum, et cum nullam tantæ præstantiæ in orbe reperies, eas nedum bonas, sed tibi optabilissimas, fore, necessariò confiteberis.

TRANSLATION.

It only remains to be enquired, whether the *statute law* of England be good or not. And as to that, it does not flow solely from the mere will of one man, as the laws do in those countries which are governed in a despotic manner; where sometimes the nature of the constitution so much regards the single convenience of the legislature, whereby there accrues a great disadvantage and disparagement to the subject. Sometimes also, through the inadvertency of the prince, his inactivity and love of ease, such laws are unadvisedly made as may better deserve to be called corruptions than laws. But the statutes of England are produced in quite another manner. Not enacted by the sole will of the prince, but with the concurrent consent of the whole kingdom by their representatives in Parliament. So that it is morally impossible but that they are and must be calculated for the good of the people; and

they must needs be full of wisdom and prudence, since they are the result not of one man's wisdom only, or an hundred, but such an assembly as the Roman senate was of old, more than three hundred select persons; as those who are conversant in the forms and method of summoning them to parliament, can more distinctly inform you. And if any bills passed into a law, enacted with so much solemnity and foresight, should happen not to answer the intention of the legislators, they can be immediately amended and repealed, in the whole or in part, that is, with the same consent, and in the same manner, as they were at first enacted into a law. I have thus laid before you, my prince, every species of the laws of England. You will of yourself easily apprehend their nature, whether they be good or not, by comparing them with other laws; and when you will find none to stand in competition with them, you must acknowledge them to be not only good laws, but such, in all respects, as you yourself could not wish them to be better.

CAP. XXII.

Non igitur contenta est lex *Franciae* in criminalibus, ubi mors imminet reum testibus convincere, ne falsidicorum testimonio sanguis innocens condemnetur. Sed mavult lex illa reos tales *torturis* cruciari, quousque ipsi eorum reatum confiteantur, quam testium depositione, qui sæpe passionibus iniquis, et quandoque subornatione malorum, ad perjuriam stimulantur. Quali cautione et astutiâ, criminosi etiam et de criminibus suspecti tot *torturarum* in regno illo generibus affliguntur, quòd fastidit calamus ea literis designare.—The author continues in a strain of the utmost abhorrence against such a practice, and depicts the revolting lengths to which it was carried in France. He is the more vehement, probably from an attempt which had been made in that reign (H. VI.) to introduce the rack into England—an instance of which, with the detestable consequences, he alludes to. In Ch. 25–33, he gives a full account of the trial by jury, and its beneficial consequences; while he shows that, from the want of a middle rank in France, it could not be practised there.

TRANSLATION.

For this reason the laws of France, in capital cases, do not think it enough to convict the accused by evidence, lest the innocent should thereby be condemned; but they choose rather to put the accused themselves to the rack, till they confess their guilt, than rely entirely on the deposition of witnesses, who, very often from unreasonable prejudice and passion, sometimes at the instigation of wicked men, are suborned, and so become guilty of perjury. By which over-cautious and inhuman stretch of policy, the suspected, as well as the really guilty, are in that kingdom tortured in so many ways, as is too tedious and bad for description.—

CAP. XXXIII.

Princeps—Video, inquit, et eas inter totius orbis jura (in casu, quo tu jam sudasti) præfulgere considero, tamen progenitorum meorum Angliæ Regum quosdam audivimus, in legibus suis minimè delectatos, *satagentes proinde Leges civiles ad Angliæ Regimen inducere*, et patrias leges repudiare fuisse conatos: horum reverà consilium vehementer admiror.

TRANSLATION.

Prince—I am convinced that the laws of England eminently excel beyond the laws of all other countries in the case you have been now endeavouring to explain; and yet I have heard that some of my ancestors, kings of England, have been so far from being pleased with those laws, that they have been industrious to introduce and make the civil laws a part of the constitution, in prejudice of the common law: this makes me wonder what they could intend or be at by such behaviour.

CAP. XXXV.

Reminiscere, princeps divine, qualiter villas et oppida Regni Franciæ frugum opulentissima, dum ibidem peregrinabaris, conspexisti, regis terræ illius hominibus ad arma et eorum equis ita onusta, ut vix in eorum aliquibus quam magnis oppidis tu hospitari valebas; ubi ab incolis didicisti, homines illos, licet in villa una per mensem aut duos perhendinaverint, nihil prorsus pro suis aut equorum suorum expensis solvisse, aut solvere velle; sed, quod pejus est, arctabant incolas villarum et oppidorum, in quæ descenderant, sibi de vinis, carnibus, et aliis, quibus indigebant, etiam carioribus necessariis quàm ibi reperiebantur, a circumvicinis villatis, suis propriis sumptibus providere. Et si qui sic facere renuebant, concitò fustibus cæsi properè hoc agere compellebantur; ac demum consumptis in villâ unâ victualibus, focalibus, et equorum præbendis, ad villam aliam homines illi properabant, eam consimiliter devastando, nec denarium unum pro aliquibus necessariis suis, etiam aut concubinarum suarum, quas in magnâ copiâ secum semper vehebant, vel pro sotularibus, caligiis, et aliis hujusmodi, usque ad minimam earum ligulam solverunt, sed singulas suas qualescunque expensas habitatores villarum, ubi moras fecerunt, solvere coegerunt. Sicque et factum est in omnibus villis et oppidis non muratis totius regionis illius, ut non sit ibi villula una expers de calamitate istâ, quæ non semel aut bis in anno, hac nephanda pressura depiletur. Præterea non patitur Rex quenquam Regni sui salem edere, quem non emat ab ipso Rege, pretio, ejus solum arbitrio, assesso. Et si insulsum pauper quivis mavult edere, quam salem excessivo pretio comparare, mox compellitur ille, tantum de sale Regis ad ejus pretium emere, quantum congruet tot personis quot ipse in domo suâ fovet. Insuper omnes

Regni illius incolæ dant, omni anno, Regi suo *quartam partem omnium vinorum* quæ sibi accrescunt; et omnis campo quartum denarium pretii vinorum, quæ ipse vendit; et ultra hæc, omnes villæ et burgi solvunt Regi annuatim ingentes summas super eos assessas pro stipendiis hominum ad arma; sic quod armata regis, quæ quàm magna semper est, pascatur annuatim de stipendiis suis, per pauperes villarum, burgorum et civitatum regni. Et ultra hæc, quælibet villa semper sustinet sagittarios duos ad minus, et aliquæ plures in omni apparatu, et abili-mentis sufficientibus ad serviendum regi in guerris suis, quoties sibi libet eos summonere, quod et crebrò facit; ac iis non ponderatis maxima *Tallagia* alia sunt omni anno assessa ad opus regis, super quamlibet villam ejusdem regni, de quibus non uno anno ipsi alleviantur. Hiis et nonnullis aliis calamitatibus plebs illa laceßita in miseriâ non minimâ vivit, aquam quotidie bibit, nec alium, nisi in solemnibus festis, plebei gustant liquorem. Froccis sive callobitis de canabo ad modum panni saccorum teguntur. Panno de lanâ, præterquam de vilissima, et hoc solum in tunicis suis subtus Froccas illas, non utuntur, neque caligis nisi ad genua discooperto residuo tiliarum. Mulieres eorum nudipedes sunt, exceptis diebus festis; carnes non comedunt, mares aut femine ibidem præter lardum baconis, quo impinguant pulmentaria sua in minimâ quantitate. Carnes assatas coctasve alias ipsi non gustant, præterquam interdum de intestinis et capitibus animalium pro nobilibus et mercatoribus occisorum. Sed gentes ad arma comedunt alitilia sua, ita ut vix ova eorum ipsis relinquantur, pro summis vescenda deliciis. Et si quid in opibus eis aliquando accreverit, quo locuples eorum aliquis reputetur, concitò ipse ad regis subsidium plus vicinis suis cæteris oneratur, quo extunc convicinis cæteris ipse equabitur paupertate. Hæc ni fallor, forma est statûs gentis plebanæ regionis illius, nobiles tamen non sic exactionibus opprimuntur. Sed si eorum aliquis calumniatus fuerit de crimine, licet per inimicos suos, non semper coram judice ordinario ipse convocari solet: sed quàm sæpe in regis camerâ, et alibi in privato loco, quandoque verò solum per internuncios, ipse inde alloqui visus est, et mox ut criminis eum principis conscientia, relatu aliorum judicaverit, in sacco positus, absque figura judicii, per præpositi Mariscallorum ministros noctanter in flumine projectus *submergitur*, qualiter et mori audivisti majorem multo numerum hominum, quàm qui legitimo processu juris convicti extiterunt. Sed tamen, quod principi placuit (juxta leges civiles) legis habet vigorem. Etiam et alia *enormia* hiis similia, ac quædam hiis deteriora, dum in Franciâ, et prope regnum illud conversatus es, audisti, non alio, quàm legis illius, colore, detestabiliter, damnabiliterque perpetrata, quæ hic inserere, nostrum nimium dialogum protelaret. Quare, quid effectus legis politicæ et regalæ, quam quidam progenitorum tuorum pro lege hac civili commutare nisi sunt, operatus est in regno Angliæ, a modo visitemus, ut utriusque legum experienciâ doctus, quæ earum tibi eligibilior sit, ex earum effectibus elicere valeas, cum (ut suprâ memoratur) dicat philosophus, quòd, '*Opposita, juxta se posita, magis apparent.*'

TRANSLATION.

You may remember, most worthy Prince, in what a condition you observed the villages and towns of France to be, during the time you sojourned there. Though they were well supplied with all the fruits of the earth, yet they were so much oppressed by the king's troops and their horses, that you could scarce be accommodated in your travels, not even in the great towns. Where, as you were informed by the inhabitants, the soldiers, though quartered in the same village a month or two, yet they neither did nor would pay any thing for themselves or horses; and, what is still worse, the inhabitants of the villages and towns where they came, were forced to provide for them *gratis*, wines, flesh, and whatever else they had occasion for; and if they did not like what they found, the inhabitants were obliged to supply them with better from the neighbouring villages. Upon any non-compliance, the soldiers treated them at such a barbarous rate, that they were quickly necessitated to gratify them. When provisions, fuel, and horse-meat, fell short in one village, they marched away full speed to the next, wasting it in like manner. They usurp and claim the same privilege and custom not to pay a penny for necessities, either for themselves or women, (whom they always carry with them in great numbers,) such as shoes, stockings, and other wearing apparel, even to the smallest trifle of a lace or point; all the inhabitants, wherever the soldiers quarter, are liable to this cruel oppressive treatment: It is the same throughout all the villages and towns in the kingdom which are not walled. There is not any, the least village, but what is exposed to the calamity, and, once or twice in the year, is sure to be plundered in this vexatious manner. Further, the king of France does not permit any one to use salt but what is bought of himself, at his own arbitrary price; and, if any poor person would rather choose to eat his meat without salt, than to buy it at such an exorbitant dear rate, he is, notwithstanding, compellable to provide himself with salt, upon the terms aforesaid, proportionably to what shall be adjudged sufficient to subsist the number of persons he has in his family. Besides all this, the inhabitants of France give every year to their king the fourth part of all their wines, the growth of that year; every vintner gives the fourth penny of what he makes of his wines by sale. And all the towns and boroughs pay to the king yearly, great sums of money, which are assessed upon them for the expenses of his men at arms. So that the king's troops, which are always considerable, are subsisted and paid yearly by those common people who live in the villages, boroughs, and cities. Another grievance is, every village constantly finds and maintains two cross-bowmen at the least; some find more, well arrayed in all their accoutrements, to serve the king in his wars, as often as he pleaseth to call them out, which is frequently done. Without any consideration had of these things, other very heavy taxes are assessed yearly upon every village within the kingdom for the king's service; neither is there ever any intermission or abatement of taxes. Exposed to these and other calamities, the peasants live in great hardship and misery. Their constant drink is water, neither do they taste throughout the year any other

liquor, unless upon some extraordinary times or festival days. Their clothing consists of frocks, or little short jerkins, made of canvas, no better than common sackcloth; they do not wear any woollens except of the coarsest sort, and that only in the garment under their frocks; nor do they wear any trouse, but from the knees upwards, their legs being exposed and naked. The women go barefoot, except on holidays; they do not eat flesh, unless it be the fat of bacon, and that in very small quantities, with which they make a soup; of other sorts, either boiled or roasted, they do not so much as taste, unless it be of the inwards and offals of sheep and bullocks, and the like, which are killed for the use of the better sort of people, and the merchants; for whom also quails, partridges, hares, and the like, are reserved, upon pain of the galleys: as for their poultry, the soldiers consume them, so that scarce the eggs, alight as they are, are indulged them by way of a dainty. And if it happen that a man is observed to thrive in the world, and become rich, he is presently assessed to the king's tax proportionably more than his poorer neighbours, whereby he is soon reduced to a level with the rest. This, or I am very much mistaken, is the present state and condition of the peasantry of France. The nobility and gentry are not so much burthened with taxes; but if any one of them be impeached for a state crime, though by his known enemy, it is not usual to convene him before the ordinary judge, but he is very often examined in the king's own apartment, or some such private place; sometimes only by the king's pursuivants and messengers: as soon as the king, upon such information, shall adjudge him to be guilty, he is never more heard of, but immediately, without any formal process, the person so accused and adjudged guilty is put into a sack, and by night thrown into the river by the officers of the provost-marshal, and there drowned: In which summary way you have heard of more put to death than by any legal process. But still, according to the civil law, 'what pleases the prince has the effect of a law.' Other things of a like irregular nature, or even worse, are well known to you, during your abode in France, and the adjacent countries, acted in the most detestable barbarous manner, under no colour or pretext of law than what I have already declared. To be particular would draw out our discourse into too great a length. Now it remains to consider what effect that *political mixed government*, which prevails in England has which some of your progenitors have endeavoured to abrogate, and instead thereof to introduce the civil law; that, from the consideration of both, you may certainly determine with yourself which is the more eligible, since (as is above mentioned) the philosopher says, 'That opposites laid one by the other do more certainly appear;' or, as more to our present argument, 'Happinesses by their contraries are best illustrated.'

CAP. XXXVI.

In regno Angliæ nullus perhendinat in alterius domo invito domino, si non in hospitibus publicis, ubi tunc pro omnibus, quæ ibidem expendit, ipse plenarie solvet, ante ejus abinde recessum; nec impune quisque

bona alterius capit sine voluntate proprietarii eorundem, neque in Regno illo præpeditur aliquis sibi de sale, aut quibuscunque mercimoniis aliis ad proprium arbitrium, et de quocunque venditore, providere. Rex tamen necessaria domûs suæ, per rationabile pretium juxta constabulariorum villarum discretiones assidendum, invitis possessoribus, per officarios suos capere potest: sed nihilominus pretium illud in manibus, vel ad diem per majores officarios domûs suæ limitandum, solvere per leges suas obnoxius est; quia nullius subditorum suorum bona juxta leges illas ipse deripere potest sine satisfactione debitâ pro eisdem. Neque Rex ibidem, per se, aut ministros suos Tallagia subsidia aut quævis onera alia, imponit legiis suis, aut leges eorum mutat, vel novas condit, sine concessionem, vel assensu totius regni sui, in parlamento suo expresso. Quare incola omnis regni illius, fructibus quos sibi parit terra sua et quos gignit pecus ejus, emolumentis quoque omnibus, quæ industriâ propriâ vel alienâ, ipse terrâ marique lucratur, ad libitum proprium utitur, nullius præpeditus injuriâ vel rapinâ, quin ad minus inde debitas consequitur emendas; unde inhabitantes terram illam locupletes sunt, abundantes auro et argento, et cunctis necessariis vitæ. Aquam ipsi non bibunt, nisi quod ob devotionis et pœnitentiæ zelum aliquando ab aliis potubus se abstinet; omni genere carniû et piscium ipsi in copiâ vescuntur, quibus patria illa non modicè est referta, Pannis de lanis bonis ipsi induuntur in omnibus operimentis suis, etiam abundant in lectisterniis, et quolibet suppellectili cui lana congruit, in omnibus domibus suis, necnon opulenti ipsi sunt in omnibus hustilimentis domus, necessariis culturæ et omnibus quæ ad quietam et felicem vitam exiguntur, secundum status suos. Nec in placitum ipsi ducuntur nisi coram judicibus ordinariis, ubi illi per leges terræ juste tractantur. Nec allocuti sive implacitati sunt de mobilibus aut possessionibus suis, vel arreptati de crimini aliquo qualitercunque magno et enormi, nisi secundum leges terræ illius et coram judicibus antedictis. Et hii sunt fructus, quos parit regimen politicum et regale: Ex quibus tibi jam apparent experientiæ effectus legis, quam quidam progenitorum tuorum objicere conati sunt. Superius quoque tibi apparent effectus legis alterius, quam tanto zelo, loco legis istius, ipsi nisi sunt inducere, ut ex fructibus earum tu agnoscas eas. Et nonne ambitio, luxus et libido, quos prædicti progenitores tui regni bono præferebant, eos ad hoc commercium concitabant? Considera igitur, Princeps optime, et jam alia quæ sequuntur.

TRANSLATION.

In England, no one takes up his abode in another man's house without leave of the owner first had, unless it be in public inns, and there he is obliged to discharge his reckoning, and make full satisfaction for what accommodation he has had, ere he be permitted to depart. Neither is it lawful to take away another man's goods without the consent of the proprietor, or being liable to be called to an account for it. No man is concluded, but that he may provide himself with salt, and other necessities for his family, when, how, and where, he pleases. Indeed, the king, by his purveyors, may take for his own use necessities

for his household, in a reasonable price, to be assessed at the discretion of the constables of the place, whether the owners will or not; but the king is obliged by the laws to make present payment, or at a day to be fixed by the great officers of the king's household. The king can't despoil the subject without making ample satisfaction for the same; he can't by himself or his ministry lay taxes, subsidies, or any imposition of what kind soever upon the subject; he can't alter the laws, or make new ones, without the express consent of the whole kingdom in parliament assembled: Every inhabitant is at liberty fully to use and enjoy whatever his farm produceth, the fruits of the earth, the increase of his flock, and the like: all the improvements he makes, whether by his own proper industry, or of those he retains in his service, are his own, to use and enjoy without the lett, interruption, or denial of any one: if he be in any ways injured or oppressed, he shall have his amends and satisfaction against the party offending: hence it is that the inhabitants are rich in gold, silver, and in all the necessaries and conveniencies of life. They drink no water, unless at certain times, upon a religious score, and by way of doing penance. They are fed, in great great abundance, with all sorts of flesh and fish, of which they have plenty every where; they are clothed throughout in good woollens; their bedding and other furniture in their houses are of wool, and that in great store. They are also well provided with all other sorts of household goods and necessary implements for husbandry: every one, according to his rank, hath all things which conduce to make life easy and happy. They are not sued at law, but before the ordinary judge, where they are treated with mercy and justice according to the laws of the land: neither are they impleaded in point of property, or arraigned for any capital crime, how heinous soever, but before the king's judges, and according to the laws of the land. These are the advantages consequent from that political mixed government which obtains in England. From hence it is plain what the effects of that law are in practice, which some of your ancestors, kings of England, have endeavoured to abrogate: the effects of that other law are no less apparent, which they so zealously endeavoured to introduce among us; so that you may easily distinguish them by their comparative advantages. What, then, could induce those kings to endeavour such an alteration, but only ambition, luxury, and impotent passion, which they preferred to the good of the state? You will please to consider, in the next place, my good Prince, some other matters which will follow to be treated of.

N.B.—The St. Thomas to whom the author so often alludes, was the famous Thomas Aquinas, a friar of the Dominican order, born A.D. 1224—a fact which proves that men in other countries knew even then what franchises belonged to the people.

Extract from Fortescue's Work in English, entitled The Difference between Dominium Regale and Dominium Politicum et Regale.

CHAPTER II.

'WHY one King reynith *Regaliter tantum*, and another reynith *Politice et Regaliter*.

'Hyt may peraventure be marvelid by some men, why one Realme is a Lordshyp only *Royall*, and the Prynce thereof rulyth yt by his law, called *Jus Regale*; and another kyngdome is a Lordschip, *Royal and Politike*, and the Prince thereof rulyth by a Lawe, callyd *Jus Politicum* and *Regale*; sythen thes two Princes beth of egall astate.

'To this dowte it may be answered in this manner: The first Institution of thes two Realmys, upon the Incorporation of them is the cause of this diversyte.

'Whan *Nembroth* by might, for his own Glorye, made and incorporate the first Realme, and subduyd it to himself by Tyranne, he would not have it governyd by any other Rule or Lawe, but by his own will; by which and for the accomplishment thereof he made it. And, therfor, though he had thus made a Realme, holy Scripture denyd to cal hym a Kyng, *Quia Rex dicitur a Regendo*: Whych thyng he dyd not, but oppressyd the people by myght, and therfor he was a Tyrant, and called *primus Tyrannorum*. But holy writ callith hym *Robustus Venator corám Deo*. For as the hunter takyth the wyld beste for to sle and eate hym, so *Nembroth* subduyd to him the People with might, to have their service and their goods, using upon them the Lordschip that is called *Dominium Regale tantum*. After hym *Belus* that was called first a Kyng, and after hym his sone *Nynus*, and after hym other Panymys; they, by example of *Nembroth*, made them Realmys, would not have them rulyd by other Lawys than by their own wills. Which Lawys ben right good under good princes, and their Kyngdoms are then most resemblyd to the Kyngdome of God which reynith upon man, rulyng him by hys own will. Wherfor many Crystyn Princes usen the same Lawe; and therfor it is, that the Lawys sayen, *Quod Principi placuit Legis habet vigorem*. And thus I suppose first beganne in Realmys, *Dominium tantum* Regale. But afterward, when mankynd was more mansuete, and better disposyd to vertue, Grete communalities, as was the Feleship that came into this Lond with *Brute*, wylling to be unyed, and made a Body Politike callid a Realme, havng an Heed to governe it; as after the saying of the Philosopher, every Communalitie unyed of many parts must needs have an Heed: than they chose the same *Brute* to be their Heed and Kyng. And they and he upon this Incorporation and Institution, and onyng* of themself into a Realme, ordenyd the same Realme so to be rulyd and justyfyd by such lawys, as they al would assent unto, which Law therfor is called *Politicum*; and because it is mynystred by a kyng, it is called *Regale*. *Dominium*

* Uniting.

Politicum dicitur quasi regimen, plurium scientia sive Consilio ministratum. The Kyng of *Scotts* reynith upon his people by this Lawe, *videlicet, Regimine Politico et Regali.* And as *Diodorus Syculus* saith, in his Boke de priscis historijs, The Realme of Egypte is rulid by the same Lawe, and therfor the Kyng therof changeth not his Lawes, without the assent of his people. And in like forme as he saith is ruled the Kyngdome of *Saba*, in *Felici Arabia*, and the Lond of *Libie*: And also the more parte of al the Realmys in *Affrike*. Which manner of Rule and Lordship the said *Diodorus* in that Boke, praysith gretely. For it is not only good for the Prince, that may thereby the more sewerly do Justice, than by his own Arbitriment; but it is also good for his people that receyve thereby, such Justice as they desyer themself. Now as me seemyth, it ys shewyd opynly ynough, why one Kyng rulyth and reynith on his people *Dominio tantum Regali*, and that other reynith *Dominio Politico et Regali*; For that one Kyngdome beganne, of and by, the Might of the Prince, and that other beganne, by the Desier and Institution of the People of the same Prince.'

CHAPTER III.

'Hereafter be schewyd, the Frutes of *Jus Regale*, and the Frutes of *Jus Politicum et Regale*.

'And hou so be it, that the French Kyng reynith upon his people *Dominio Regali*; Yet Saynt *Lewes* sumtyme Kyng ther, ne any of his Progenytors set never Talys or other Impositions, upon the People of that Lond, without the assent of the three Astatys, which whan they be assemblid are like to the Court of Parlement in *England*. And this order kept many of his successours until late days, that Englishmen made such a war in *Fraunce*, that the three Estats durst not come to geders. And than for that cause, and for grete necessite which the French Kyng had of Goods, for the defence of that Lond, he took upon him to set Talys and other Impositions upon the Commons without the assent of the three Estats; but yet he would not set any such chargis, nor hath set upon the Nobles, for feare of rebellion. And because the Commons, though they have grutchid, have not rebelled, or be hardy to rebell, the French Kyngs have yearly sythen, sett such chargis upon them, and so augmented the same chargis, as the same Commons be so impoverished and destroyyd, that they may unneth* lyve. Thay drynke water, they eate apples, with Bredd right brown made of Rye. They eate no Flesche, but if it be selden, a litill Larde, or of the Entrails, or Heds of Bests selayne for the Nobles and Merchaunts of the Lond. They weryn no Wollyn, but if it be a pore cote under their uttermost Garment, made of grete canvas, and cal it a frok. Their Hosyn be of like Canvas, and passen not their Knee; wherfor they be gartrid, and their Thyghs bare. Their Wifs and Children gone bare fote; they may in none otherwyse lyve. For sum of them, that was wonte to pay to his Lord for his Tenement, which he hyrith by the Yere, a Scute, payyth now to the Kyng, over that Scute, five Skuts.

* Scarcely.

Wher through they be artyd by necessite, so to watch, labour, and grub in the ground for their sustenance, that their nature is much wastid, and the Kynd of them brought to nowght. Thay gone crokyd, and are feble, not able to fyght, nor to defend the Realme; nor they have wepon, nor monye to buy them wepon withal; but verely they lyvyn in the most extreme Povertie and Myserye, and yet they dwellyn, in one, the most fertile Realme of the World: wher through the French Kyng hath not men of his own Realme, able to defend it, except his Nobles, which beryn non such Impositions; and therfor they are ryght likely of their Bodys, by which cause the said Kyng is compelled to make his army, and Retennys for the defence of his land, of Straungars, as *Scotts, Spaniards, Arragonars, Men of Almayn*, and of other Nacions, els al his Ennymys might overrenne hym. For he hath no Diffence of his own, except his Castells and Fortasis. Loo this the frute of his Jus Regale. Yf the Realme of *England*, which is an Ile, and therefor may not lightly get Socoures of other Lands, were rulid under such a Lawe, and under such a Prince, it would be than a Pray to all other Nacions, that would conquere, robbe, and devour yt; which was well prouvyd in the tyme of the *Brytons*, when the *Scotts* and the *Pyctes* so bette and oppresyd this Lond, that the People therof soughte helpe of the *Romayns*, to whom they had byn Trybutorye. And whan they could not be defendyd by them, they sought helpe of the Duke of *Brytayne*, then called *Lital Brytayne*, and graunted therfor, to make his brother *Constantine* their Kyng. And so he was made Kyng here and raynyd many Yers, and his Children after hym, off which grete *Arthure* was one of their Yssue. But blessed be God, this Lond is ruled under a better Lawe, and therfor the People therof be not in such penurye, nor thereby hurt in their Persons, but thay be Weathye, and have all thyngs necessarye, to the sustenance of nature. Wherfor they be myghty, and able to resyst the Adversarijs of the Realme, and to bett other Realmes, that do or will do them wrong. Loo this is the Frute of *Jus Politicum et Regale*, under which we lyve. Sumwhat now I have schewyd you of the Frutys of both Lawys, *Ut ex fructibus eorum cognoscatis eos, &c.*

We might give other passages, and particularly Chapter X., but we conceive that we have already sufficiently established the statement in the text.

Comines gives the same description of the tyranny in other countries, particularly in France; and while his account of the military quartered on the inhabitants fully corresponds with that of Fortescue, in other respects he says—'Car ils ne se contentent point de la vie ordinaire, et de ce qu'ils trouvent chez le laboureur, dont ils sont payez; ains au contraire battent les pauvres gens et les outragent, et contraignent d'aller chercher pain, vin et vivres dehors: et si le bon homme a femme ou fille qui soit belle, il ne fera que sagement de la bien garder.'

He represents the disgraceful plundering of the people by the prince; declares that it is tyranny to take the subject's money without his consent, by the act of the three estates, and pays this tribute of praise to England: "Or selon mon advis, entre toutes les seigneuries du monde, dont j'ay connoissance, où la chose publique est mieux traitée,

et où règne moins de violence sur le peuple, et où il n'y a nuls édifices abbatus, ny démolis pour guerre, c'est Angleterre; et tombe le sort et le malheur sur ceux qui font la guerre.'—*Mémoires de Philippe de Comines*, ch. xviii. and xix.

NOTE B.

I have ascertained that, in the copy of Leslie's MS. in the British Museum, a copy, however, which is far from being perfect, the number alleged to have been executed for the northern rebellion is filled up at 800. But when the manuscripts—of which the most perfect one (one in the hand-writing of the bishop's amanuensis) is in the Advocates' Library—are so discordant, we cannot depend on the number specified in figures of either; and, therefore, we must rely on Camden, who had so many opportunities of knowledge, on this subject, equal at least to Leslie, and who extracted great part of his information as to negotiations, from a copy of Leslie's manuscript. See Anderson's Introduction.

NOTE C.

I have in a note on Impressments said, that though I was not aware of Mr. Hume's authority (he refers to none), I was not prepared to contradict his statement in regard to the country being obliged to arm and clothe the troops which were raised, and transport them to the sea-ports at their own charge. But I conceive that I am now in a situation to contradict it, and contrast the alleged tyranny of Elizabeth's reign with that of Charles I., for whose sake the statement was made. In Mr. Pym's Speech on Grievances, on the 7th of November, 1640, there is the following passage, which none offered to contradict: 'Military charges ought not to be laid upon the people by warrant of the king's hand; nor by letters of the council table; nor by order of the lords lieutenants of the counties, nor their deputies. *It began to be practised as a loan, for supply of coat and conduct money, in Queen Elizabeth's time, with promise to be repaid as appears by a constat warrant in the Exchequer, and certain payments, but now-a-days never repaid.* The first particular, brought into a tax, was the muster-master's wages, which, being but for small sums, was generally digested; yet, in the last parliament, it was designed to be remedied: But now there follows—1. *Pressing of men against their wills, or to find others*; 2. *Provisions for public magazines of powder, spades, and pick-axes*; 3. *Salary of officers, cart-horses and carts, and such like.*'—*Parl. Hist.* vol. ix. p. 56; Cobbett's ditto, vol. ii. p. 642.

Mr. Hume has, in note LL. to volume v., given some extracts from the parliamentary journals preserved by Townshend and D'Ewes, but with what adroitness he has selected the most obnoxious passages, and stopped wherever the context gave a different character to the whole, we shall now prove. The subject regarded monopolies, when a bill was

proposed by Mr. Lawrence Hyde in explanation of the common law. Bacon said, 'For the prerogative royal of the prince, for my own part, I ever allowed of it, and it is such as I hope I shall never see discussed. The queen, as she is our sovereign, hath both an enlarging and restraining liberty of her prerogative; that is, she hath power, by her patents, to set at liberty things restrained by statute-law, or otherwise: And, by her prerogative, she may restrain things that are at liberty. For the *first*: She may grant *non obstantes*, contrary to the penal laws; which, truly, in my own conscience, are as hateful to the subject as monopolies.'

The following, however, Hume omits. 'For the *second*: *If any man out of his own wit, industry, or endeavour, find out any thing beneficial for the commonwealth, or bring any new invention, which every subject of this realm may use*; yet, in regard of his pains, travel, and charge therein, her majesty is pleased (perhaps) to grant him a privilege to use the same only by himself, or his deputies, for a certain time: This is one kind of monopoly. Sometimes there is a glut of things, when they be in excessive quantities, as of corn, and perhaps her majesty gives license to one man of transportation: This is another kind of monopoly. Sometimes there is a scarcity or small quantity; and the like is granted also.

These, and divers of this nature, have been in tryal, both in the *Common Pleas* upon actions of trespass; where, if the judges do find the privilege good for the commonwealth, they will allow it, otherwise disallow it. And also I know that her majesty herself hath given command to her attorney-general to bring divers of them (since the last parliament) to tryal in the Exchequer. Since which, fifteen or sixteen to my knowledge have been repealed: Some upon her majesty's own express command, upon complaint made unto her by petition, and some by *quo warranto* in the Exchequer. 'But, Mr. Speaker,' said he, pointing to the bill, 'this is no stranger in this place, but a stranger in this vestment.' Here, again, Hume begins his quotation: 'The use hath been ever, by petition, to humble ourselves to her majesty, and by petition to desire to have our grievances redressed, especially when the remedy toucheth her so nigh in prerogative.' Here, again, Hume stops. 'All cannot be done at once; neither was it possible, since the last parliament, to repeal all. If her majesty makes a patent, or a monopoly to any of her servants; that we must go and cry out against: But if she grant it to a number of burgesses, or corporation, that must stand, and that, forsooth, is no monopoly.' This is all omitted. But the following is not: 'I say, and I say again, that we ought not to deal, or meddle with, or judge of, her majesty's prerogative. I wish every man, therefore, to be careful in this point; and, mark the sequel, 'humbly pray this house to testify with me that I have discharged my duty in respect of my place in speaking on her majesty's behalf; and do protest, I have delivered my conscience in saying what I have said.'

Dr. Bennet said: 'He that will go about to debate her majesty's prerogative royal, must walk warily. In respect of a grievance out of that city for which I serve, I think myself bound to speak that now which I had not intended to speak before; I mean a *monopoly of salt*.

It is an old proverb, *sal sapit omnia*: Fire and water are not more necessary. But for other monopolies of cards (at which word Sir Walter Rawleigh blushed), dice, starch, &c., they are (because monopolies), I must confess, very hateful, though not so hurtful. I know there is a great difference in them; and I think, if the abuse in this *monopoly of salt* were particularized, this would walk in the fore-rank.

'Now, seeing we are come to the means of redress, let us see it be so mannerly and handsomely handled, that, after a commitment, it may have good passage.'

Mr. Lawrence Hyde said: 'I confess, Mr. Speaker, that I owe duty to God and loyalty to my prince. And, for the bill itself, I made it, and I think I understand it: And far be it from this heart of mine to think, this tongue to speak, or this hand to write, anything in prejudice or derogation of her majesty's prerogative royal, and the state.' Here Hume prudently pauses. 'But because ye shall know this course is no new invention, but long since digested in the days of our forefathers, above three hundred years ago, I will offer to your considerations one precedent in the 50th Ed. III. At which time, one John Peache was arraigned at this bar, for that he had obtained of the king a monopoly for sweet wines: The patent, after great advice and dispute, adjudged void; and before his face, in open parliament, cancell'd; because he had exacted three shillings and fourpence upon every tun of wine; himself adjudged to prison until he had made restitution of all that he ever had received, and not to be delivered till after a fine of 500*l.* paid to the king.'

'Out of the spirit of humility, Mr. Speaker,' says Mr. Francis Moore, 'I do speak it, There is no act of hers that hath been, or is, more derogatory to her own majesty, or more odious to the subject, or more dangerous to the commonwealth, than the granting of these monopolies.'

'Mr. Townshend of Lincoln's Inn (the collector of this journal), seeing the disagreement of the committees, and that they could agree upon nothing, made a motion to this effect: First, to put them in mind of a petition made the last parliament, which, though it took no effect, we should much wrong her majesty, and forget ourselves, if we should think to speed no better in the like case now; because there was a commitment for this purpose, and the committees drew a speech, which was delivered by the Speaker, word for word, at the end of the parliament. But now we might hope, that by the sending of our Speaker, presently after such a committee, and speech made, with humble suit, not only to repeal all monopolies grievous to the subject; but also, that it would please her majesty to give us leave to make an act, that they might be of no more force, validity, or effect, than they are at the common law, without the strength of her prerogative: which, though we might now do, and the act being so reasonable, we did assure ourselves her majesty would not deny the passing thereof; yet we, her majesty's loyal and loving subjects, would not offer, without her privy or consent (the cause so nearly touching her prerogative), or go about the doing of any such act. And also, that at the committee, which should make this speech, every member of this house, which either found himself, his town, or country grieved, might put in, in fair

writing, such exceptions and monopolies as he would justify to be true. And that the Speaker might deliver them with his own hand, because many hindrances might happen.'

Mr. Davies said: 'God hath given power to absolute princes, which he attributeth to himself: *Dixi quod Dii estis.*' In this instance the conduct is most reprehensible. Here Hume stops; and yet the sequel places the meaning in a different point of view; while another speech, by Davies (who turned so great a sycophant afterwards, asserting the absolute authority of King James), is of a very different description.—'And as attributes unto them, he hath given them majesty, justice, and mercy. *Majesty*, in respect of the honour that the subject sheweth unto his prince. *Justice*, in respect he can do no wrong; therefore the law is, 1 Hen. VII., that the king cannot commit a disseisin. *Mercy*, in respect he giveth leave to his subjects to right themselves by law. And therefore, in the 44th *Ass.* an indictment was brought against bakers and brewers; for that, *by colour of license*, they had broken the assize: Wherefore, according to that precedent, *I think it most fit to proceed by bill, and not by petition.*'

'This dispute,' says Secretary Cecil, 'draws two great things in question: *First*, the prince's power; *Secondly*, the freedom of Englishmen. I am born an Englishman, and a fellow member of this house. I would desire to live no day in which I should detract from either.'

'I am servant to the queen; and before I would speak or give my consent to a case that should debase her prerogative, or abridge it, I would wish my tongue cut out of my head. I am sure there were law-makers before there were laws.'

'One gentleman went about to possess us with the execution of the law in an ancient record of 50th Ed. III., likely enough to be true, in that time, when the king was afraid of the subject. Though this presence be a substance, yet it is not the whole substance of the parliament; for, in former times, all sate together, as well king as subject. And then it was no prejudice to his prerogative to have such a monopoly examined. If you stand upon law, and dispute of the prerogative, hark what Bracton saith: *Prerogativam nostram nemo audeat disputare*, &c. For my own part, I like not these courses should be taken; and you, Mr. Speaker, should perform the charge her majesty gave unto you at the beginning of this parliament, not to receive bills of this nature. For her majesty's ears be open to all our grievances, and her hands stretched out to every man's petition.'—This is detestable.

(The patent for bottles was lately made void by judgment in the Exchequer.)

Mr. Davies (the same gentleman whose particular words are caught at by Hume, without the context) 'moved the house first: That he, for his part, thought the proceeding by bill to be most convenient; for the precedent in the 50th Edward III. warranteth the same. *And therefore let us do generously and bravely, like parliament men; and ourselves send for them and their patents, and cancel them before their faces: Arraign them, as in times past, at the bar, and send them to the Tower; there to remain, until they have made a good fine to the queen, and made*

some part of restitution to some of the poorest that have been oppressed by them;—and withal laughed.'

Mr. Martin, after a long speech made touching these monopolies, thus concluded: 'And therefore the gentleman that spake last (Davies) spake most honestly, learnedly, and stoutly. Yet thus much I must needs say, his zeal hath masked his reason; and that, I think, was the cause of his fervent motion, which, I desire, may be cooled with a petition in most dutiful manner,' &c.

'I believe,' says Secretary Cecil, '*there never was in any parliament a more tender point handled than the liberty of the subject, and the prerogative royal of the prince.* What an indignity, then, is it to the prince, and injury to the subject, that when any is discussing this point, he should be cryed and coughed down!' (Does not this show the temper of the house; and was it not likely himself was so lashed for his slavish speech?) 'This is more fit for a grammar-school than a parliament. I have been a counsellor of state these twelve years; yet never did I know it subject to construction of levity or disorder: much more ought we to be in so great and grave an assembly. Why? we have had speeches, and speech upon speech, without either order or discretion. One would have had us to proceed by bill, and see if the queen would have denied it. Another, that the patents should be brought here before us, and cancelled; and this were bravely done. Others would have us to proceed by way of petition, which, of both, doubtless is best.

'But for the first (and especially for the second), it is so ridiculous, that I think we should have had as bad success as the devil himself would have wished in so good a cause. Why? if idle courses had been followed, we should have gone (forsooth) to the queen with a petition to have repealed a patent or monopoly of tobacco-pipes (which Mr. Wingfield's note had), and I know not how many conceits. But I wish every man to rest satisfied, until the committees have brought in their resolutions according to your commandments.'

The Speaker, only three days after this debate, received a message to deliver to the house, which was followed up by Cecil, announcing the repeal of those monopolies. 'She said that, partly by intimation of her council, and partly by divers petitions that have been delivered unto her, both going to chapel and also walking abroad, she understood that divers patents that she had granted were grievous unto her subjects, and that the substitutes of the patentees had used great oppression. But she said she never assented to grant anything that was *malum in se*.—I cannot express unto you the apparent indignation of her majesty towards these abuses.' She assured them of a reformation, and imputed its not having been done to Essex's rebellion. That now it should be done: 'that some should presently be repealed, some suspended, and not put in execution; but such as should first have a trial according to the law for the good of her people.'

'Against the abuses her wrath was so incensed, that she said she neither would nor could suffer such to escape with impunity.'

Cecil said, 'There are no patents now of force which shall not presently be revoked; for what patent soever is granted, there shall be left to the overthrow of that patent a liberty agreeable to the law. There

is no patent but if it be *malum in se*, the queen was ill apprised in her grant; but all to the generality are unacceptable. I take it there is no patent whereof the execution thereof hath been injurious; would that had never been granted! I hope there shall never be more.' (All the house said, *Amen*.)

On another occasion, a day or two after, but relative to the message, Mr. Secretary Cecil said: 'If I should tell you otherwise than truth in a matter of so great consequence, I should need no other process than my own conscience. That to so gracious a message, there were never returned more infinite thanks, we all are assured. From the queen I have received a short answer in these words: *You can give me no more thanks for that which I have promised you, than I can and will give you thanks for that which you have already performed* (meaning the subsidies and fifteens). So inseparably are the qualities of the prince and the subject good for the one and the other.'

'There were some other topics,' says Mr. Hume, 'in favour of prerogative, still more extravagant, advanced in the house this parliament. When the question of the subsidy was before them, Mr. Serjeant Heyle said: "Mr. Speaker, I marvel much that the house should stand upon granting a subsidy or the time of payment, when all we have is her majesty's, and she may lawfully, at her pleasure, take it from us: Yea, she hath as much right to all our lands and goods as to any revenue of the crown." At which all the house hemmed, and laughed, and talked. "Well," quoth Serjeant Heyle, "all your hemming shall not put me out of countenance" (this man was qualified with a vengeance to browbeat a witness). So Mr. Speaker stood up and said, "It is a great disorder that this house should be so used." Mr. Hume should have added, 'for it is the ancient use of every man to be silent when any one speaketh; and he that is speaking should be suffered to deliver his mind without interruption.' 'So the said serjeant proceeded, and when he had spoken a little while, the house hemmed again, and so he sat down. In his latter speech, he said he could prove his former position by precedents in the time of Henry III., King John, King Stephen, &c., which was the occasion of their hemming. It is observable that Heyle was an eminent lawyer, and a man of character; and though the house, in general, showed their disapprobation, no one cared to take him down, or oppose those monstrous positions.' How differently the same thing strikes different men! When I met with this in the journals by D'Ewes and Townshend, I conceived that it was degrading to the house for any member to make a remark on what had so excited the utter contempt of the whole house, that the Speaker's interposition could not procure the serjeant a hearing. But when I read Mr. Hume's note, I changed my opinion, and was glad to find the serjeant taken down in the following manner: '*Mr. Montague of the Middle Temple said, that there were no such precedents; and if all the preambles of subsidies were looked upon, he should find it was of free gift. And although her majesty requireth this at our hands, yet it is in us to give, not in her to exact, of duty.*'—D'Ewes, p. 633; Townshend, p. 205. Now, as the one follows the other immediately, I would ask, was it possible for Hume to overlook it? But Heyle was a great lawyer. He made a poor figure with

it. Nay, but he was a man of character ! I would desire no better proof of the contrary than that slavish conduct which excited such scorn in the assembly to whom it was addressed.

'It was asserted this session,' says Hume, 'that, in the same manner as the Roman consul was possessed of the power of rejecting or admitting motions in the senate, the Speaker might either admit or reject bills. The house declared themselves against this opinion ; but the very proposal of it is a proof at what a low ebb liberty was at that time in England.' Now let us take the journals from which Hume derives his information.

'Then the questions upon the continuance of statutes were offered to be read, but the house called for the bill of ordnance ; yet the clerk fell to read the questions, but the house still cried upon ordnance. At length Mr. Carey stood up, and said : "In the Roman senate the consul always appointed what should be read, what not ; so may our Speaker, whose place is a consul's place : *If he err, or do not his duty, fitting to his place, we may remove him. And there have been precedents.* But to appoint what business shall be handled, in my opinion we cannot." AT WHICH SPEECH SOME HISSED. Mr. Wiseman said : "I reverence Mr. Speaker in his place, but I take great difference between the old Roman consuls and him. Ours is a municipal government, and we know our grievances better than Mr. Speaker ; and, therefore fit every man, *alternis vicibus*, should have those acts called for he conceives most necessary." All said Ay, ay, ay.'—Does this convey what Mr. Hume imputes to it ? D'Ewes, p. 677. The rest of Mr. Hume's note has already been commented on by us. He unfortunately was unacquainted with law, and misled by its language. But, as he ever dwells on proclamations, alleging that, in the reigns of even James and Charles, nobody doubted that they might be issued with the effect of laws, we shall give the following from Coke's Reports.

*'The Case of Proclamations, Mich. VIII. James I. A.D. 1610.
(12 Coke's Reports, 74.)*

'Memorandum, that, upon Thursday, 20th September, Regis Jacobi, I was sent for to attend the Lord Chancellor, Lord Treasurer, Lord Privy Seal, and the Chancellor of the Duchy, there being present the attorney, the solicitor, and recorder : and two questions were moved to me by the Lord Treasurer ; the one, if the king by his proclamation may prohibit new buildings in and about London, &c. ; the other, if the king may prohibit the making of starch of wheat ; and the Lord Treasurer said, that these were preferred to the king as grievances, and against the law and justice : and the king hath answered, that he will confer with his privy council, and his judges, and then he will do right to them. To which I answered that these questions were of great importance. 2. That they concerned the answer of the king to the body, viz. to the Commons of the house of parliament. 3. That I did not hear of these questions till this morning at nine of the clock ; for

the grievances were preferred and the answer made when I was in my circuit. And, lastly, both the proclamations which now were showed, were promulgated anno 5 Jac., after my time of attorneyship; and for these reasons, I did humbly desire them that I might have conference with my brethren the judges about the answer of the king, and then to make an advised answer according to law and reason. 'To which the Lord Chancellor said, that every precedent had first a commencement, and that he would advise the judges to maintain the power and prerogative of the king; and in cases in which there is no authority and precedent, to leave it to the king to order in it according to his wisdom, and for the good of his subjects, or otherwise the king would be no more than the Duke of Venice; and that the king was so much restrained in his prerogative, that it was to be feared the bonds would be broken: and the Lord Privy Seal said, that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease: and all concluded, that it should be necessary at that time to confirm the king's prerogative with our opinions, although that there were not any former precedent or authority in law; for every precedent ought to have a commencement.

'To which I answered, that true it is that every precedent hath a commencement; but when authority and precedent is wanting, there is need of great consideration, before that any thing of novelty shall be established, and to provide that this be not against the law of the land: for I said, that the king cannot change any part of the common law, nor create any offence by his proclamation which was not an offence before, without Parliament. But at this time, I only desired to have a time of consideration and conference with my brothers, for, "*deliberandum est diu quod statuendum est semel*:" to which the solicitor said, that divers sentences were given in the Star Chamber upon the proclamation against building; and that I myself had given sentence in divers cases, for the said proclamation: to which I answered, that precedents were to be seen, and consideration to be had of this upon conference with my brethren, for that "*melius est recurrere, quam male currere*;" and that indictments conclude, "*contra leges et statuta*," but I never heard an indictment to conclude, "*contra regiam proclamationem*." At last, my motion was allowed, and the lords appointed the two Chief Justices, Chief Baron, and Lord Altham, to have consideration of it.

'Note, the king, by his proclamation or otherwise, cannot change any part of the common law, or statute law, or the customs of the realm, 11th Henry IV. c. 37; Fortescue, *De Laudibus Angliæ Legum*, cap. 9; 18th Ed. IV. c. 35, 36, &c.; 31st Henry VIII. cap. 8, *hic infra*. Also the king cannot create any offence by his prohibition or proclamation which was not an offence before, for that was to change the law, and to make an offence which was not; for "*ubi non est lex, ibi non est transgressio*;" *ergo*, that which cannot be punished without proclamation cannot be punished with it. *Vide* le stat. 31st Henry VIII. cap. 8, which Act gives more power to the king than he had before; and yet there it is declared, that proclamations shall not alter the law, statutes, or customs of the realm, or impeach any in his inheritance, goods, body, life, &c. But if a man should be indicted for a contempt against

a proclamation, he shall be fined and imprisoned, and so impeached in his body and goods. *Vide* Fortescue, cap. 9, 18, 34, 36, 37, &c.

‘But a thing which is punishable by the law, by fine and imprisonment, if the king prohibit it by his proclamations before that he will punish it, and so warn his subjects of the peril of it, then if he commit it after this, as a circumstance, aggravates the offence; but he by proclamation cannot make a thing unlawful which was permitted by the law before; and this was well proved by the ancient and continual forms of indictments, for all indictments conclude, “contra leges et consuetudinem Angliæ,” or “contra leges et statuta,” &c.; but never was seen any indictment to conclude, “contra regiam proclamationem.”’

‘So in all cases the king, out of his providence, and to prevent dangers which it will be too late to prevent afterwards, he may prohibit them before, which will aggravate the offence if it be afterwards committed; and as it is a grand prerogative of the king to make proclamation, for no subject can make it without authority from the king, or lawful custom, upon pain of fine and imprisonment, as it is held in the 22nd Henry VIII. procl. B. But we do find divers precedents of proclamations which are utterly against law and reason, and for that void; for, “quæ contra rationem juris introducta sunt, non debent trahi in consequentiam.”’

‘An Act was made, by which foreigners were licensed to merchandize within London; Henry IV. by proclamation prohibited the execution of it; and that it should be in suspense, “usque ad proximum parliamentum;” which was against law. *Vide* dors. claus. 8th Henry IV. Proclamation in London. But, 9th Henry IV., an Act of parliament was made, that all the Irish people should depart the realm, and go into Ireland before the feast of the Nativity of the Blessed Lady, upon pain of death, which was absolutely *in terrorem*, and was utterly against the law.

‘Hollinshed, p. 722, A.D. 1546, 37th Henry VIII., the whore-houses, called the stews, were suppressed by proclamation, and sound of trumpet, &c.

‘In the same term it was resolved by the two Chief Justices, Chief Baron, and Lord Altham, upon conference betwixt the lords of the privy council and them, that the king, by his proclamation, cannot create any offence which was not an offence before, for then he may alter the law of the land by his proclamation in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment: Also the law of England is divided into three parts, common law, statute law, and custom; but the king’s proclamation is none of them; also “malum aut est malum in se aut prohibitum,” that which is against the common law is “malum in se;” “malum prohibitum” is such an offence as is prohibited by Act of parliament and not by proclamation. Also it was resolved that the king hath no prerogative, but that which the law of the land allows him.

‘But the king, for prevention of offences, may, by proclamation, admonish his subjects that they keep the laws, and do not offend them, upon punishment to be inflicted by the law, &c.

‘Lastly, if the offence be not punishable in the Star Chamber, the pro-

hibition of it by proclamation cannot make it punishable there; and after this resolution no proclamation imposing fine and imprisonment was afterwards made, &c.'

We intended to have given quotations from Gilby, *Goodman of Obedience, England's Complaint against the Canons*, Cartwright, &c.; Luther, lib. *contra Rusticos*, apud Sleiden, c. 5; lib. *de Bello contra Turcas*, apud Sleiden, c. 14; Zuinglius, tom. i. articul. 42; Calvin on *Daniel*, c. iv., c. v. p. 28, c. vi. 22; Bucer on *Matth.* c. v.; Paræus in *Rom.* xiii.; Knox, &c. &c.: but I conceive it to be unnecessary to swell out this farther; and I request the reader to look into Milton's *Prose Works, Tenure of Kings and Magistrates*, for the quotations, which, on examination, he will find to be correct.

We have already spoken of the practice of kneeling, and the distance preserved between ranks and members of the same family, in ancient times. But I forgot to say, that Walpole, in his translation of Hentzner's *Travels*, has said, in a note on a passage describing Queen Elizabeth's retiring from church, and every one in the line formed by the attendants, kneeling as she turned her eyes that way, that the practice was dispensed with by James, and referred to Bacon's *State Papers*. But I do not know what part of that philosopher's works Mr. Walpole alluded to under this title, and I can find no passage authorizing the statement. That the practice was continued is indisputable. See our third volume.

I have already, from Henry, given an account of the state preserved by the famous Duke of Sully. The following passage, however, taken from the *Supplement to his Memoirs*, is more to be relied on, and so singular, that I cannot refrain from giving it.

'Il y employoit la matinée entière, excepté que quelquefois il sortait pour prendre l'air, une demi-heure ou une heure avant le dîner. Alors on sonnoit une grosse cloche, qui étoit sur le pont, pour avertir de sa sortie. La plus grande partie de sa maison se rendoit à son appartement, et se mettoit en haie, depuis le bas de l'escalier. Ses écuyers, gentilshommes, et officiers marchaient devant lui, précédés de deux Suisses, avec leurs hallebardes. Il avoit à ses côtés quelques-uns de sa famille, ou de ses amis, avec lesquels il s'entretenoit: suivoient ses officiers aux gardes et sa garde Suisse; la marche étoit toujours fermée par quatre Suisses.

'Rentré dans sa salle à manger, qui étoit un vaste appartement, où il avoit fait peindre les plus mémorables actions de sa vie, jointe à celle de Henri-le-Grand, il se mettoit à table. Cette table étoit comme une longue table de réfectoire, au bout de laquelle il n'y avoit de fauteuils que pour lui et pour la Duchesse de Sully; tous ses enfans, mariés ou non-mariés, quelque rang ou naissance qu'ils eussent, et jusqu'à la Princesse de Rohan, sa fille, n'avoient que des tabourets, ou des sièges plians; car, dans ce temps-là, la subordination des enfans aux pères étoit encore si grande, qu'ils ne s'asseyoient et ne se couvroient jamais en leur présence, qu'après en avoir reçu l'ordre. Sa table étoit servie avec goût et magnificence. Il n'y admettoit que les seigneurs et

dames de son voisinage, quelques-uns de ses principaux gentilshommes, et des dames et filles d'honneur de la Duchesse de Sully; excepté la compagnie extraordinaire, tous se levoient et sortoient au fruit. Le repas fini, on se rendoit dans un cabinet joignant la salle à manger, qu'on nommoit le *Cabinet des illustres*, parce qu'il étoit orné des portraits de papes, rois, princes et autres personnages distingués ou célèbres, qu'il tenoit d'eux-mêmes. On en voit encore aujourd'hui la plus grande partie à Villebon.

' Dans une autre salle à manger, belle et richement meublée, le capitaine des gardes tenoit une seconde table, servie à peu près comme la première, où toute la jeunesse alloit manger, et où ne mangeoient effectivement que ceux que la seule disproportion d'âge empêchoit le Duc de Sully de recevoir à la sienne. M. le Duc de Sully d'aujourd'hui à connu plusieurs personnes de qualité, qui lui ont dit que dans les visites qu'ils se souvenoient d'avoir faites, étant fort jeunes, chez le Duc de Sully, avec leurs pères, il ne retenoit que ceux-ci pour manger à sa table, et qu'il disoit ordinairement aux jeunes gens: *Vous êtes trop jeunes pour que nous mangions ensemble, et nous nous ennuiérions les uns les autres.*'—*Supplement*, tom. v. p. 356-7.

NOTE D.

Pope Gregory XV's Letter to the Prince of Wales during his Residence in the Peninsula.

' Most noble Prince,—We wish you health and light of God's grace. For as much as Great Britain hath always been fruitful in virtues, and in men of great worth, having filled the one and other world with the glory of her renown, she doth also very often draw the thoughts of the holy apostolical chair to the consideration of her praises. And, indeed, the church was but then in her infancy, when the King of kings did chuse her for her inheritance, and so affectionately, that 'tis believed the Roman eagles were hardly there before the banner of the cross. Besides that many of her kings, instructed in the knowledge of the true salvation, have preferred the cross before the royal sceptre, and the discipline of religion before covetousness, leaving examples of piety to other nations, and to ages yet to come; so that having merited the principalities and first places of blessedness in heaven, they have obtained on earth the triumphant ornament of holiness. And although now the state of the English church is altered, we see, nevertheless, the court of Great Britain adorned and furnished with moral virtues which might serve to support the charity we bare unto her, and be an ornament to the name of Christianity, if withal she should have for her defence and protection the orthodox and Catholic truth. Therefore by how much the more the glory of your most noble father and the apprehension of your royal inclination delight us, with so much the

more zeal we desire that the gates of the kingdom of heaven might be opened unto you, and that you might purchase to yourself the love of the universal church.

‘Moreover, it being certain that Gregory the Great, of most blessed memory, hath introduced to the people of England and taught to their kings the law of the gospel, and the respect of apostolical authority, we, as inferior to him in holiness and virtue, but equal in name and degree of dignity, think it very reasonable that we, following his blessed footsteps, should endeavour the salvation of those provinces, especially at this time, when your design, most noble prince, elevates us to the hope of an extraordinary advantage. Therefore, as you have directed your journey to Spain towards the Catholic king, with desire to ally yourself to the house of Austria, we do commend your design, and indeed do testify openly in this present business that you are he that takes principal care of our prelacy; for, seeing that you desire to take in marriage the daughter of Spain, from thence we may easily conjecture that the ancient seeds of Christian piety which have so long flourished in the hearts of the kings of Great Britain may, God prospering them, revive again in your soul. *And, indeed, it is not to be believed, that the same man should love such an alliance that hates the Catholic religion, and should take delight to oppress the Holy Chair.* To that purpose, we have commended that most humble prayers be made continually to the Father of Lights, that he would be pleased to put you as a fair flower of Christendom, and the only hope of Great Britain, in possession of that most noble heritage which your ancestors purchased for you, to defend the authority of our sovereign High-priest, and to fight against the monsters of heresy. Remember the days of old, inquire of your fathers, and they will tell you the way that leads to heaven, and what way the temporal princes have taken to attain to the everlasting kingdom. Behold the gates of heaven opened! The most holy kings of England, who came from England to Rome accompanied with angels, did come to honour and do homage to the Lord of lords, and to the prince of the apostles, in the apostolical chair; their actions and their examples being as so many voices of God, speaking and exhorting you to follow the course of the lives of those to whose empire you shall one day attain.

‘Is it possible that you can suffer that the heretics should hold them for impious, and condemn those whom the faith of the church testifies to reign in the heavens with Jesus Christ, and have command and authority over all the principalities and empires of the earth? Behold how they tender you the hand of this truly happy inheritance, to conduct you safe and sound to the court of the Catholic king, and who desire to bring you back again into the lap of the Roman church; beseeching, with unspeakable sighs and groans, the God of all mercy for your salvation, and to stretch out to you the arms of the apostolical charity to embrace you with all Christian affection, even you that are her desired son, in showing you the happy hope of the kingdom of heaven. And indeed you cannot give a greater consolation to all the people of the Christian world, than to put the prince of the apostles in possession of your most noble island, whose authority hath been so long

in the kingdom of Britain for the defence of kingdoms, and the divine oracle. The which will easily come to pass, and that without difficulty, if you open your heart to the Lord that knocks, upon which depends all the happiness of that kingdom. It is from this our great charity, that we cherish the praises of the royal name, and that which makes us desire that you and your royal father may be styled with the names of the deliverers and restorers of the ancient and paternal religion of Great Britain.

'This is it we hope for, trusting in the goodness of God, in whose hands are the hearts of kings, and who causeth the people of the earth to receive healing, to whom we will always labour with all our power to render you gracious and favourable. In the interim, take notice by these letters, of the care of our charity, which is none other than to procure your happiness; and it will never grieve us to have written them, if the reading them stir but the least spark of the Catholic faith in the heart of so great a prince, whom we wish to be filled with long continuance of joy, and flourishing in the glory of all virtues.

'Given at Rome, in the Palace of St. Peter, the 20th of April, 1623, in the third of our Popedom.'

(Rush. vol. i. p. 78, Old Translation.)

*'Gregorius PP. XV. Duci
Buckinghamiæ.*

*Pope Gregory to the Duke of
Buckingham.*

'NOBILIS VIR,—Salutem et lumen divinæ gratiæ. Autoritas qua nobilitatem tuam in Britanna regia florere accipimus, non modo meritorum præmium, sed virtutis patrocinium habetur. Egregium plane decus, atque adeo dignum, cui populi illi addi cupiant diuturnitatem: Verum vix dici potest quantus ei cumulus gloriæ in orbe terrarum accederet si, Deo favente, foret Catholicæ religionis præsidium: facultatem certe nancisceris, qua te eorum principum conciliis inserere potes, qui nominis immortalitatem adepti ad cælestia regna pervenerunt. Hanc tibi a deo tributam, et a pontifice Romano commendatam occasionem, ne elabi patiare, Nobilis Vir; non te præterit, regalium consiliorum conscium, quo in loco Britanna res hac ætate sit, quibusque Spiri-

'RIGHT HONOURABLE,—We wish you health and the light of grace. The authority which we understand you have in the court of England, is accounted not only the reward of merit, but the patronage of virtue. A remarkable honour, indeed, and of such worth that the people there ought to pray for its continuance. But it can scarce be expressed what an access of glory it would receive in the world, if by the grace of God it should become the safeguard of the Catholic religion. You have the means to ingraft yourself into the assembly of these princes who, having obtained an immortal name, have purchased the heavenly inheritance. Suffer not, honourable sir, this occasion to slip out of your hands, afforded you by God, and recommended to you by the

tus Sanctæ loquentis vocibus principum tuorum aures quotidie personet. Quæ gloria esset nominis si, te hortatore ac suasore, Anglicani reges cœlestem illius gloriæ hæreditatem recuperarent quam majores eorum amplissimam in iis regnis reliquerunt, divini cultus incrementa curando et pontificiæ autoritatis ditione, non solum, tuenda sed etiam propaganda! Multi fuerunt, atque erunt in posterum, quos benevolentia regum perituris divitiis locupletavit, et invidiosis titulis auxit; atque ut id nobilitas tua consequatur, non ideo sempiternis laudibus nomen tuum memor posteritas colet: at enim si consilia tua potentissimos reges populosque ad ecclesiæ græmium reducerent, scriberetur nomen tuum in libro viventium quos non tangit tormentum mortis ac te historiarum monumenta in eos sapientes referrent in quorum splendore reges ambulaverunt. Quibus autem te præsentis vitæ solatiis et futuræ præmiis remuneraretur Deus ille, qui dives est in misericordia, omnes facile provident quibus nota est ars et vis qua regnum cœlorum expugnatur. Tantæ te felicitatis compotem fieri ut cupiamus efficit non solum Pontificia charitas, ad cuius curas totius humani generis salus pertinet, sed etiam genetricis tuæ pietas, quæ cum temundo peperit Romanæ etiam ecclesiæ quam ipsa matrem suam agnovit iterum parere cupit: Proin cum in Hispanias profectionem paret dilectus filius religiosus vir Didacus de la Fuente, qui gravissima principum tuorum negotia in urbe sapienter administravit, ea mandavimus ut nobilitatem tuam adeat atque has apostolicas literas deferat quibus Pontificiæ charitatis magnitudo et salutis tuæ cupido declaretur.

Pope of Rome. You are not ignorant, as intimate in the king's counsels, in what condition the affairs of England are in this our age, and with what voices of the Holy Ghost speaking, the ears of your princes daily tingle. How greatly would you be renowned, if by your persuasion and admonition, the kings of England should obtain the heavenly inheritance of that glory which their ancestors left them most ample in those kingdoms, by taking care of the increase of God's worship, and not only defending, but propagating the dominions of the Pope's authority! There have been, and there will be many hereafter, whom the favour of kings hath much enriched with wealth that fadeth away, and honoured with envious titles: And if your Honour attain this, posterity will not therefore adore your memory with everlasting praises. But if your advice should reduce potent kings and nations to the lap of the church, your name would be written in the book of the living, whom the pangs of death assault not; and the records of historians would number you among those sages in whose light and conduct kings have walked. And with what comfort of the present life, and reward of the future, that God who is rich in mercy would recompence you, they easily foresee who are acquainted with the skill and violence with which the kingdom of heaven is conquered. That we wish you to be partaker of so great happiness, not only our Papal charity moves us, to whose care the salvation of mankind belongeth, but also the piety of your mother, who, having brought you forth to the world, desires to bring you forth again to the church, whom she acknow-

Cum ergo audire poteris sententiæ nostræ interpretem, atque iis virtutibus instructum quæ exterarum nationum amorem Catholico etiam et religioso sacerdoti conciliare potuerunt. Ille quidem ea de te in hac orbis patria prædicavit, ut dignus sit quem singulari affectu complectaris et autoritate tua munias Britannorum regum populorumque saluti et gloriæ inseruiem. Nos quidem patrem misericordiarum orabimus ut nobilitati tuæ cœlestis regni fores patefaciat et frequentia præbeat clementiæ suæ documenta.

ledges for her mother. Therefore Didacus de la Fuente, our beloved son, a friar, who hath prudently managed the most important affairs of your princes here in Rome, being to go to Spain, we have commanded him to wait upon your Honour, and to deliver you these apostolical letters to evidence the greatness of our Papal charity, and our desire of your salvation. You may be pleased to hearken to him as the interpreter of our mind, and one adorned with those virtues which have been able to purchase the love of foreign nations to a Catholic and regular priest. Truly he hath spoken such things of you in this country of the world, that he is worthy, whom you should cherish with a singular affection, and protect with your authority, as one studious of the glory and safety of the king and people of Great Britain. We will pray the Father of mercies that he would open the doors of the kingdom of heaven to your Honour, and afford you frequent evidences of his clemency.

'Datum Romæ apud Sanctam Mariam majorem sub annulo Piscatoris, die 19 Maii, 1623. Pontificatus nostri Tertio.'

'Given at Rome,' &c.
(Rush. vol. i. p. 80,
Old Translation.)

*Carolus Princeps Gregorio
PP. XV.*

*Prince Charles to Pope
Gregory XV.*

'SANCTISSIME PATER.—Beatitudinis vestræ literas non minore gratitudine et observantia accepimus, quam exigit ea qua novimus exaratas insignis benevolentia, et pietatis affectus. Atque illud imprimis gratum fuit nunquam satis laudata majorum exempla inspicienda nobis a vestra sanctitate atque imitanda fuisse proposita: Qui li-

'MOST HOLY FATHER,—We have received your letter with no less thankfulness and respect than is due to the singular good-will and godly affections wherewith we know it was written. It was most acceptable unto us that the never-enough-renowned examples of our ancestors were proposed to us by your Holiness for our inspection

cet multoties omnium fortunarum et vitæ ipsius discrimen adiverint, quo fidem Christianam latius propagarent, haud tamen alacriori animo in infestissimos Christi hostes, crucis Christi vexilla, intulerunt, quam nos omnem opem et operam adhibebimus ut quæ tam diu exultavit pax et unitas in Christianam rempublicam postliminio reducatur. Cum enim discordiarum patris malitia inter illos ipsos qui Christianam profitantur religionem tam infelicia seminarit dissidia, hoc vel maxime necessarium ducimus ad sacrosanctam Dei et salvatoris Christi gloriam feliciter promovendam. Et minori nobis honori futurum existimabimus, tritam majorum nostrum vestigiis insistentes viam, in piis ac religiosis susceptis illorum æmulos atque imitatores extitisse, quam genus nostrum ab illis atque originem duxisse. Atque ad idem nos istud plurimum inflamat perspecta nobis Domini regis ac Patris nostri voluntas, et quo flagrat desiderium ad tam sanctum opus porrigendi manum auxilatricem, tum qui Regium pectus exedit dolor, cum perpendit quam sævæ exoriuntur strages, quam deplorandæ calamitates ex principum Christianorum dissensionibus. Judicium vero quod Sanctitas vestra tulit de nostro cum domo ac principe Catholico affinitatem et nuptias contrahendi desiderio, et Charitati vestræ est consentaneum, nec a sapientia invenietur alienum. Nunquam tanto quo ferimur studio, nunquam tam arcto et tam indissolubili vinculo ulli mortalium conjungi cuperemus, cujus odio Religionem prosequeremur. Quare Sanctitas vestra illud in animum inducat, ea modo nos esse semperque futuros moderatione, ut quam longissime abfuturi simus ab omni

and imitation; who, though they often hazarded their lives and fortunes to propagate the Christian faith, yet did they never more cheerfully display the banners of the cross of Christ against his most bitter enemies, than we will endeavour to the utmost, that the peace and union which so long triumphed may be reduced into the Christian world, after a kind of elimination or exile. For since the malice of the Father of discords hath sowed such unhappy divisions amongst those who profess the Christian religion, we account this most necessary thereby to promote, with better success, the glory of God and Christ our Saviour; nor shall we esteem it a less honour to tread in their footsteps, and to have been their rivals and imitators in holy undertakings, than to have been descended of them. And we are very much encouraged to this, as well by the known inclinations of our Lord and Father, and his ardent desire to lend a helping hand to so pious a work, as by the anguish that gnaws his royal breast, when he considers what cruel destructions, what deplorable calamities arise out of the dissensions of Christian princes. Your Holiness' conjecture of our desire to contract an alliance and marriage with a Catholic family and princess, is agreeable both to your wisdom and charity: for we would never desire so vehemently to be joined in a strict and indissoluble bond with any mortal whatsoever, whose religion we hated. Therefore, your Holiness may be assured, that we are and will be of that moderation, as to abstain from such actions, which may testify our hatred against the Roman Catholic religion; we will rather

opere quod odium testari possit ullum adversus religionem Catholicam Romanam: Omnes potius captabimus occasiones quo leni benignoque rerum cursu sinistrae omnes suspiciones e medio penitus tollantur; ut sicut omnes unam individuum Trinitatem, et unum Christum crucifixum confitemur, in unam fidem unanimiter coalescamus: Quod ut assequamur, labores omnes atque vigilias, regnorum etiam atque vitae pericula parvi pendimus. Reliquum est ut quas possumus maximas, pro literis quas insignis muneris loco ducimus, gratias agentes, Sanctitati vestrae omnia prospera et felicitatem aeternam comprecamur.

'Datum Matriti,
20 Junii, 1663.'

embrace all occasions whereby, through a gentle and fair procedure, all sinister suspicions may be taken away: That, as we all confess one individual Trinity, and one Christ crucified, we may unanimously grow up into one faith. Which, that we may compass, we little value all labour and watchings, yea, the very hazard of our kingdoms and life. It remains, we render thanks to your Holiness for your letter, which we esteem as a singular present; and wish your Holiness all prosperity and eternal happiness.

'Dated at Madrid,
20th June, 1623.'
(Rush. vol. i. p. 82,
Old Translation.)

The above from Rushworth was preserved by some, as the collector informs us, who were in Spain at the treaty, and we have transcribed it, for the sake of uniformity, with the other letters from the same source, and also for the gratification of the English reader, by presenting the old translation. The following, published in Hardwicke's *State Papers*, 'was transcribed from the original draught,' and varies a little from the other. Indeed, in drawing a letter of such importance, it was to have been expected that it should be written more than once—a circumstance which accounts for the difference. The variations in substance are small; yet, such as they are, they are more flattering to the Pope.

'SANCTISSIME PATER, — Literas Stis. V. Vigesimo Aprilis 1623 Romae datas, tantâ gratitudine et observantiâ accepimus, quantâ cum benevolentia pioque affectu videntur exaratæ: nobisque imprimis grata fuere illa, quibus uti placuerit Sti. V., incitamenta à nunquam satis laudatis nobilissimorum majorum nostrorum exemplis petita, qui ante actis seculis nunquam parati magis exstiterunt ad vitae capitisque discrimen adversus hostes Christi nomini infestos ultro subeundum, quo sacrosanctum ipsius cultum latius propagarent, quam nos hoc tempore (quo inveterata Satanae, discordiarum patria, malitia obtinuit tantum, ut dissidia admodum infelicia inter illos ipsos, qui religionem Christianam profitentur, longè latèque disseminaverit), ad omnem opem atque operam sedulo adhibendam, ut ecclesia Dei aliquando reconcilietur, atque ad pristinam pacem et unitatem denuo reducatur: quod pro primo semper

gradu ac passu tantique momenti esse habuimus, ut vel maximè conferat ad sacrosanctum Domini et Salvatoris nostri Jesu Christi nomen ac gloriam felicius in terris promovendam: quod non minori nobis honori futurum ducemus, progenitorum nostrorum vestigiis prementes, in tam piis et religiosis susceptis eorundam imitatores extitisse, quam ab iisdem genus nostrum et originem deduxisse: ad quod nos plurimùm hortantur præcepta domini nostri regis ac patris mei propensio, et vehemens admodum quo flagrat desiderium huic tam sancto operi manum porrigere auxiliatricem: nec non intimus animi dolor, quo commovetur, dum secum contemplatur deplorandas strages et calamitates, quæ a simultatibus et dissensionibus inter principes Christianos exortis passim producuntur. Nec illud porro iudicium quod Sti. V. visum est facere de eo, quod nos tenemur desiderio, cum principe Catholicâ Romanâ matrimonium contrahendi, à Stis. V. sapientiâ atque charitate dissonum omnino est aut alienum, siquidem, uti a S. V. rite observatum est, vix aut ne vix quidem tanto, quo fruimur, studio cuperemus tam arcto et indissolubili propinquitatis vinculo cum cujusdam personâ conjungi, cujus religionem odio et detestationi haberemus. Sed S. V. hoc sibi persuasum habeat, eam nostram esse, semperque in posterum futuram moderationem, ut non solum quam longissimè à nobis suspicionem omnem removebimus, atque ab omni demum actu temperabimus, qui aliquam præ se speciem ferat nos à Romanâ Catholicâ religione abhorre, sed omnes potius captabimus occasiones, quo leni benignoque rerum processu sinistræ omnes suspensiones è medio penitus tollantur; ut sicut omnes unam et individuum Trinitatem, et unicum Christum crucifixum publicè profiteamur, ita in unam tantummodo fidem *in ecclesiam unam* unanimiter coalescamus. Quod ut effectum demus, labores omnes et vigilias, et quodcunque itidem periculum, quod inde rebus nostris aut personæ poterit imminere, si facto opus erit, parvi pendemus. Quod reliquum est Sti. V. gratias, quas possumus maximas, pro literis vestris, quas insignis muneris loco habemus, referentes, Sti. V. prospera omnia, æternamque felicitatem comprecamur.'—Vol. i. pp. 452, 453.

It certainly must have been more flattering to the pope, for Charles, first, to promise his utmost efforts to restore the ancient peace and unity of *the church*, than merely of the Christian commonwealth or world; and lastly, that he would embrace all occasions whereby, through a gentle and fair procedure, all sinister suspicions might be removed; that *as we all confess one individual Trinity and one Christ crucified, we may at last coalesce in one faith and in one church*, than merely in one faith.

It is remarkable, that this letter was written after the prince and duke must have received an answer from James to their proposal of acknowledging the spiritual supremacy of the pope, in which he refuses to accede to it. Their letter to James is dated 10th of March, 1623, a few days after their arrival at Madrid, and James's answer is dated the 25th of the same month (Hardwicke's *State Papers*, vol. i. pp. 402, 411, 412), while the prince's letter to the pope is dated on the 20th of June following.

Gregory XV. died before this letter reached Rome; and his successor Urban VIII. wrote immediately to James a long letter, in the most earnest strain advising him to return into the bosom of the Catholic church, as the most glorious act that could be performed. His opinion of the prince's letter was expressed both to James in the letter to that monarch, and in one to Charles himself.

'It seems to have been a special providence of God,' says he to James, 'that the first letters which we received reigning in the seat of St. Peter, were those which the most noble Charles, prince of Wales, wrote to our predecessor, as a testimony of his affection to the popes of Rome.'—Rush. vol. i. p. 95.

To Charles he writes: 'The first letters which were delivered to us after we were preferred to the throne of the apostleship, were those which you sent out of Spain to Gregory the Fifteenth, of famous memory, our predecessor. We lifted up our hands to heaven, and gave thanks to the Father of mercies, when, in the very entry of our reign, a British prince began to perform this kind of obeisance to the pope of Rome.'—*Id.* p. 98.

By the private articles sworn to by James and the prince, all laws, particular or general, against the Catholics, were to be suspended; and there was to be a full toleration of the Romish religion in private houses throughout the whole British dominions; and while both the king and prince engaged to interpose their authority with parliament to have an abrogation of 'particular laws made against the Roman Catholics, to whose observance also the rest of our subjects and vassals are not obliged; as likewise the general laws under which all are equally comprehended, to wit, as to the Roman Catholic religion, if they be such as is aforesaid, which are repugnant to the Roman Catholic religion; and that hereafter, we will not consent that the said parliament should ever at any time enact or write any other new laws against Roman Catholics,'—they also engaged that no attempts, public or private, should be made to persuade the Infanta to change her religion.

Charles farther engages, 'that all those things which are contained in the foregoing articles, and concern as well the suspension as the abrogation of all laws made against the Roman Catholics, shall within three years infallibly take effect, and sooner if it be possible.' He also undertook to intercede with his father, that the term of years which the children of the marriage were to be under the sole charge of the mother, should be lengthened from ten years, (the public stipulation,) to twelve; and to grant it himself if the succession opened to him during that period.—*Id.* p. 89.

END OF THE FIRST VOLUME.

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